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THE CONCEPT OF SOVEREIGNTY IN FOUR MEDIEVAL POLITICAL PHILOSOPHERS: JOHN OF SALISBURY, ST. THOMAS AQUINAS, EGIDIUS COLONNA AND MARSILIUS OF PADUA

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INTRODUCTION

Few concepts in the history of language possess the emotive connotation of the term "sovereignty." This word has the power to conjure up appalling memories of ancient despots, mediaeval tyrants, powerful Popes, ruthless Renaissance monarchs and arbitrary modern dictators. And all with some truth. Yet the term has respectable lineage and should be accorded its rightful dignity.

Doubtlessly much of the odium surrounding the concept has stemmed from inadequate or faulty definition on the part of claimants. For the purposes of this work, sovereignty will be considered an indispensable ingredient of a perfect society. If the state is a perfect society, as Aristotle contended, then it is one that is self-sufficing, independent, autonomous, sovereign.[1]

The state must be independent in the sense that it acknowledges no dictation from other nations in internal affairs. It is self-governing, a law unto itself, autonomous. Sovereignty, then, may be conceived of as the independent power of self-rule by which a state controls its citizens and its territory in such a way that there is no higher appeal in the political order.[2]

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[1] Heinrich A. Rommen, The State in Catholic Thought (St. Louis: B. Herder Book Co., 1950), p. 389.

It need hardly be mentioned that, as with the individual, so with the state, no sovereignty is ever absolute. The state is restricted by natural law, the natural rights of mankind and by other states with equal sovereignty.[3] The denial of these limitations by certain political philosophers has engendered implacable opposition to the concept.

Jacques Maritain advocates scrapping the concept of sovereignty along with that of absolutism. And well he might in the context within which he writes.[4] He has been treating the subject from the standpoint of Bodin, Hobbes and Rousseau. Each in his own way makes sovereignty absolute, separate from, and transcendent to, the citizens governed. It matters little that the first two repose this power in a ruler and the latter in the populace; the result is the same[5] He rightfully concludes that the modern notion of sovereignty is morally and politically untenable.

That this modern view was repugnant to the general political thought of the Middle Ages we propose to demonstrate in this work. The Middle Ages had fairly definite ideas about the limitation of state power; in addition, they earnestly strove to fit the Church, as a definite power, into this framework. Admittedly, this was not an easy task.

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[2] _Ibid_., pp. 397-98.

[3] _Ibid_., p. 257; p. 398 and pp. 404-05.

[4] _Man and the State_ (Chicago: The University of Chicago Press, 1951), p. 53.

[5] _Ibid_., pp. 31-49.

It is not the purpose of this treatise to recount the history of the political development of mediaeval Church and state. The sheer magnitude of such a task prohibits such an approach. Rather, it seems appropriate to restrict this treatment of sovereignty to the views of four representative political thinkers who contributed to this concept at a most crucial period. This period embraced the latter part of the twelfth century, the thirteenth and early fourteenth.

This treatise intends to show, in addition, not only where the theories of these men were in agreement but also the areas in which they were divergent. Only in this way can the full picture be presented.

Chapter I examines the roots of mediaeval political theory as expressed in Greek, Roman, and Patristic sources. The Gelasian theory of Church-State delineation is of particular significance in the light of later developments. Chapter II explores the rise of temporal and ecclesiastical friction. Principally here the discussion concerns the limitation placed by John of Salisbury on both organizations in addition to his frank advocacy of tyrannicide. The opinions of St. Thomas Aquinas on state sovereignty and Church power comprise Chapter III. As representative of the extreme papal claim for Church sovereignty, the opinions of Egidius Colonna are developed in Chapter IV. To balance the views of the latter, Chapter V sets forth the concept of the ruler's role according to Marsilius of Padua. His extreme view of the subordinate rank of the Church in the political scheme will be treated in detail. In the Conclusion the key arguments of these four representative writers will be summarized with a view to establishing a common medieval notion of sovereignty. To round out the treatise, this latter concept will then be contrasted with conclusions selected from representative proponents of modern sovereignty.

The medieval thinkers did not solve the problem of sovereignty, but they did make a valuable contribution to its understanding in both the civil and ecclesiastical spheres. Our own age, for that matter, has not solved it either. But what the middle ages thought about sovereignty is worthy of our attention and warrants our investigation.

CHAPTER I

ORIGIN OF MEDIEVAL IDEAS OF STATE AND GOVERNMENT

Aristotelian Theory of State and Government

To Aristotle the medieval political philosophers owe an incalcuable debt. Although his works were not reintroduced into the Western world until the middle of the thirteenth century, many of his principles were clearly in implicit agreement with general medieval thought. Rediscovered, his ideas were eagerly seized upon to substantiate key positions. How heavily St. Thomas, Egidius Colonna, and Marsilius relied on Aristotle's concepts we shall have occasion to see later. Here are some of the basic principles.

For Aristotle the end of the state is some *good*. Every state is a community of some type and every community is established for some good since man always acts to obtain a good. The state, then, since it embraces all communities must aim at a good higher than any other, i.e., the highest good.[1] Later he expresses this idea very succinctly: "The end of the state is the good life."[2] This tenet played a prominent role in the medieval treatment of sovereignty.

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[1] Aristotle, *Politics*, trans. Benjamin Jowett, in *The Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1941), i, 1, 1252^a, 1-5. Cf. also Aristotle, *Nicomachean Ethics*, trans. W. D. Ross (McKeon edition), i, 1, 1094^a, 1-30 and i, 2, 1094^b, 1-11; also cf. viii, 9, 1160^a, 5-25.

Aristotle next proceeds to derive two more qualities for the state: it is self-sufficing and natural in origin.

He traces its development from the basic form of the family, the village, and finally to the self-sufficing community. For him the state originates to provide for man's bare needs but continues for the sake of the good life. Now if the early forms of society are natural, so is the state, for the state is their end and the nature of a thing is manifested in its end. The final cause and end of a thing is best, and to be self-sufficing is certainly an end and the best condition a thing can achieve.[3] From this he concludes that the state is a creation of nature; and man, by nature, is a political animal.[4]

This natural view of the state's origin was destined to clash with later theories, especially the Augustinian; but more on this later. Suffice to say, this natural concept had a definite impact on later medieval thought.

Elaborating on this theme Aristotle maintains that the situation in society of some ruling and others being ruled is not only necessary but expedient. His argument is extremely forceful: in all things that form a composite whole, i.e., made up of parts, there is this distinction of ruler and subject. This situation obtains not only in the case of living creatures but also in the very constitution of the universe.[5]

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[2] Politics, iii, 9, 1280^b, 39-40.

[3] Ibid., i, 2, 1252^b, 9-35.

[4] Ibid., i, 2, 1253^a, 1-2.

If the ruler-subject relationship is natural, it is not difficult to follow Aristotle's arguments for unity within the state. The state must be a unity of reciprocal parts. He takes pains to point out that the communism advocated by Plato, through Socrates, is not feasible; it would amount to uniformity, not unity. Aristotle would hold, for example, that the family should be united with the state but not be absorbed by the latter. Such uniformity as Plato's, being opposed to unity, would eventually result in an inferior state. The state, in brief, is a plurality which should be united.[6] This element of unity was later to become a keystone of medieval political structure.

In the Aristotelian concept few attributes of the state rank with the element of justice. This essential trait is mentioned in his discussion of why the founder of the state is the greatest of benefactors. "For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all"... "But justice is the bond of men in states"....[7] The administration of justice or determining what is just is the principle of order in political society.[8] The medieval thinkers regarded it just as highly in evaluating sovereignty.

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[5] *Ibid.*, i, 5, 1254^a, 21-33.

[6] *Ibid.*, ii, 5, 1263^b, 27-37.

It is relevant to this treatise to discover what form of government Aristotle would consider the best. Before he approached that subject, however, he deemed it important to define the qualities of a good citizen. He is one who takes part in deliberative or judicial administration; one, strictly speaking, is a citizen whose special characteristic is that he shares in the administration of justice and of some office in the state.[9]

When all have the virtues of good citizens, the state can be perfect, Aristotle notes. We must assume that in the good state all citizens must be good.[10] "Men are praised for knowing how to rule and obey and he is said to be a citizen of approved virtue who is able to do both."[11] It has been said that he who has not learned to obey cannot be a commander. The two are not the same, says Aristotle, but the good citizen ought to be able to do both; he should understand how to rule like a freeman and how to obey like a freeman.[12]

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[7] Ibid., i, 2, 1253^a, 31-33 and 37.

[8] Ibid., 39, cf. also W. D. Ross, Aristotle (London: Methuen & Co., Ltd., 1949), p. 268. This author commends Aristotle for being free of the delusion that the state is above morality, or possesses an unique set of moral values different from those binding individuals. Additionally, cf. Ethics, op. cit., v, 7, 1134^b, 18-35 and 1135^a, 1-4. Here Aristotle provides an excellent treatment of political justice, dividing it into its natural and legal (conventional) components.

[9] Ibid., iii, 1, 1257^a, 19-24.

[10] Ibid., iii, 4, 1277^a, 1-4.

Not every citizen is a good man, but only those who either by themselves or in conjunction with others are engaged in the conduct of public affairs.[13]

Having stressed the necessity of the citizen's active role, Aristotle turns to his theory of sovereignty within the state. Since the state is a partnership and the partnership of citizens is the constitution, when the form of government changes the state is no longer the same.[14] Citizens may differ, but the salvation of the community is the common business of all. This community is the constitution.[15] The government is everywhere sovereign in the state and the constitution is in fact the government, e.g., in democracies the people are supreme, but in oligarchies it is the few. In his political theory the constitution is the arrangement of magistrates.[16]

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[11] _Ibid_., 25-27.

[12] _Ibid_., 1277^b, 11-15.

[13] _Ibid_., iii, 5, 1278^b, 3-6.

[14] _Ibid_., iii, 3, 1276^b, 1-4.

[15] _Ibid_., iii, 4, 1276^b, 28-30.

It should be noted here that Aristotle is not yet stating what form of government he thinks should be sovereign. He is merely stating that the constitution, the politeuma, determines the character of ordering. So, in effect, the constitution makes the state to be what it is, for the constitution will reflect the views of the supreme or ruling class. Particularly after a political upheaval the constitution will reflect the truly sovereign party, and in this sense, the ordering within the state will become the soul of the body politic.[17]

As a rule of thumb for identifying defective forms of government, Aristotle states that those forms which are concerned only with the interests of the rulers are defective, perverted, and despotic; contrariwise, those which have regarded for the common interest follow strict principles of justice.[18] This recurring theme was to become almost axiomatic in later medieval thought.

As Aristotle proceeds to a discussion of the various forms of good government and their perverted counterparts, he again notes that constitution and government are the same in meaning. Supreme authority in the state is either in the hands of one, a few, or the many. The true forms of government will direct with a view to the common interest; when concerned only with private interests, these forms are perversions. In the instance of one person ruling for the common interest, the form is monarchy. When several rule, who are either the best men, or have the best interests of the state at heart, the government is an aristocracy. The third form consists of the citizens at large ruling for the common interests; this is called a constitution or polity.[19]

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[16] Ibid., iii, 6, 1278^{b}, 11-14.

[17] Charles H. McIlwain, The Growth of Political Thought in the West (New York: The Macmillan Company, 1932), p. 77 and pp. 80-81.

[18] Politics, op. cit., iii, 6, 1279^{a}, 16-22.

What are the perverted forms of these three? For royalty we have tyranny; rule for the interest of the monarch alone. Opposed to aristocracy is oligarchy, which looks to the interests of the wealthy alone. Set against constitutional government is democracy; a rule which looks only to the common good of all.[20] It will be seen later that these six forms of government as envisioned by Aristotle were to receive scrutiny and comment in later medieval political thought, especially in the writings of St. Thomas Aquinas.

That Aristotle does not use the term "democracy" to mean the form of government we know by that title today will become obvious as this treatise explores further his observations on these six forms and determines his preference.

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[19] Ibid., iii, 7, 1279^a, 29-40.

[20] Ibid., 1279^b, 4-10, (Italics mine.) Cf. also Ethics, op. cit., viii, 10, 1160^a, 3-36 and 1160^b, 1-36; 1161^a, 1-10.

In recounting the difference between democracy and oligarchy, Aristotle demonstrates how each errs with regard to justice. Those advocating democracy think justice is equality; so it is, however, not for all but only for equals. On the other hand, those favoring oligarchy believe justice is inequality; so it is, however, not for all but only for unequals. Each faction selfishly sees its own advantage and people are notoriously bad judges in their own cases. They see only partial justice, not absolute justice. Members of an oligarchy, seeing themselves unequal in wealth, consider themselves also to be unequal in all things; followers of democracy, seeing themselves as equal in one respect, e.g., free birth, consider themselves as equal in all respects. Both miss the point, according to Aristotle. If wealth is the only concern of the state, the oligarchs are correct; if the state exists only for equal enforcement of private rights, then the democrats are right. But Aristotle appeals to a basic principle to refute both in enunciating that a state exists for the sake of a good life, and not for the sake of life alone. For, he adds, that if life alone were the object, brutes and slaves might well form a state, but this is obviously a preposterous hypothesis, for they have no share in happiness or free choice.[21]

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[21] Ibid., iii, 9, 1280^a, 8-34, cf. also Ross, op. cit., pp. 241-42. This authority notes that Aristotle was acquainted primarily with a form of slavery free of the disgraceful degradation that marked Roman slavery and modern forms. However, he feels Aristotle's contention that a slave, qua slave,

Those who are solicitious for good government, he continues, must consider the factors of virtue and vice in the state. Any state truly so called, and not just enjoying the title, must look to virtue as an end; forget this end and the community becomes a mere alliance.[22]

With characteristic fairness and thoroughness Aristotle proceeds to examine further the injustice of the three forms of government he deems defective. Certainly it is an injustice for the poor to divide the property of the rich, even if the greater number of the people desire this, as would happen, in his view, under democracy. Equally unjust would it be for the few and the wealthy to plunder the people, as would occur under an oligarchy. Tyranny, too, is obviously unjust for it consists of one man, subject to many passions, possessing absolute power. All positions seem to involve disagreeable consequences when one is endeavoring to determine where the supreme power in the state is to be centered.[23]

Endeavoring to give all positions a fair presentation, Aristotle states that a dangerous condition prevails when the ruling class is a multitude of free men who have

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could not be a friend of his master, but as a man, could be a friend of the latter, is incompatible with human nature; for more on Aristotle's view of the benign aspect of Greek slavery being best fitted to a "barbarian's" capacity, see also A. E. Taylor, Aristotle (rev. ed.; New York: Dover Publications, Inc., 1955), pp. 102-03). (Italics mine.)

[22] Ibid., 1280^b, 4-9.

[23] Ibid., iii, 10, 1281^a, 11-36.

little wealth and little personal merit. Their folly will lead to error and their dishonesty to crime. Yet, there is also peril in the state's excluding poor men from office, for the country will seethe with enemies. That less talented men should have the power to call the good to account, or to exercise authority, seems a strange arrangement to Aristotle's mind. Yet, he observes that in discussing the problem of rule by men who have little wealth and personal merit, we should be able to see quite clearly that *laws*, when *good*, should reign *supreme* in the state.[24] This latter concept, as will be seen later, was also to become a cardinal tenet of later medieval political philosophy.

In stating his view regarding the best form of government Aristotle makes a significant distinction. He first explains the best type from an idealized standpoint; secondly, the best from a practical position.

Ideally, then, the best form is "that which is administered by the *best* and in which there is one man, or a whole family, or many persons, excelling all the others together in virtue, and both rulers and subjects are fitted, the one to rule, the others to be ruled, in such a manner as to obtain the most eligible life."[25]

His emphasis on the best persons ruling had been presaged earlier when he commented to the effect that sometimes a whole family, or an individual, happens to be so pre-eminent in virtue as to surpass all others. When this occurs, such a royal family ought to be supreme or this one citizen should be chosen king of a whole nation.[26]

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[24] *Ibid.*, iii, 11, 1281^b, 25-31; 1282^a, 24-26; 1282^b, 1-2. (Italics mine.)

[25] *Ibid.*, iii, 18, 1288^a, 34-39. (Italics mine.)

Yet, Aristotle is ever the realist. He looks to the best practical form of government and finds it in a fusion of oligarchy and democracy. Merged, they combine the two elements, rich and poor, and become equivalent to a polity or constitutional government.[27] He says he must content himself with the best constitution for most states and the best life for most men with average virtue and education; the search for the ideal state is only an aspiration. To support his position he recalls from his Ethics that the happy life is one lived according to virtue without impediment and that virtue is a mean. Such a mean attainable by all must be best. Now, he argues, virtue and vice belong to both cities and constitutions in the same way, for the constitution is the life of the city. The mean in the state is the class between the rich and the poor. Those in the mean are more ready to follow a rational principle and the constitution (or polity) aims at them.[28]

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[26] Ibid., iii, 17, 1288^a, 15-19.

[27] Ibid., iv, 8, 1293^b, 32-34; 1294^a, 21-23, cf. also Werner Jaeger, Aristotle, trans. Richard Robinson (2d. ed.; Oxford: at the Clarendon Press, 1948), pp. 281-82 and p. 292. This writer commends Aristotle's realism in repudiating Platonic withdrawal from political activity because of its possible sordidness. For Aristotle, authority need not be despotic, and he who does nothing cannot do well. So well did he synthesize the ideal and the practical that many theorists have felt free to choose that part of his doctrine suited to their designs. Yet, in admitting a multiplicity of political forms, he always kept firmly in mind the end of the state.

Reason, or the rational principle, is of paramount significance for Aristotle. In his customary, lucid style he explains why those endowed with unusual gifts of beauty, strength and wealth, as well as those extremely poor or weak, find it difficult to follow this rational principle. Those of the middle class are least likely to shrink from rule or be over-ambitious concerning it. Those with an excess of friends, fortune, and strength are unwilling and unable to submit to authority, for they have never learned the habit of obedience. At the opposite extreme are the poor, generally a degraded lot. Thus, he notes, we have one class that cannot obey, hence can only rule despotically; the other knows not how to command and must be ruled like slaves.[29]

The solution is simple. The state should be composed as far as possible of equals and similars; these will be the middle class. The best community is one in which the middle class is large and stronger than both of the other two combined, or stronger, at least, than one of the others. This prevents either of the extremes from becoming dominant. The state is fortunate, indeed, if the citizens have moderate and sufficient property, for if either extreme prevails, there will result either an extreme democracy or an oligarchy. This situation is not likely to occur when a middle constitution (or polity) exists.[30]

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[28] Ibid., iv, 11, 1295^a, 1295^b, 25-40.

[29] Ibid., 1295^b, 16-21.

In a well-rounded resume of Aristotle's view of the ideal state Professor McIlwain identifies the area in which the latter centers sovereignty or supreme power. The state must not be too rich or poor; must be self-sufficient, but not aggressive; great, but not large. It must have its *supreme* *power* resting in a *true* *aristocracy* whose members rule and obey each other while maintaining a life of freedom for themselves from mercenary pursuits. These leaders must aim at the highest measure of culture and virtue, of well-being and true happiness, attainable by each and all. The necessary material work is to be done by those whose lack of virtue disqualifies them for the higher life but fits them for manual toil at the direction of their moral, intellectual and political superiors.[31]

In the light of this treatment of Aristotle's concept of the state, it should be obvious that he did not believe all were capable of ruling. Men are by nature unequal; the superior rightfully should rule the inferior. Even in a commonwealth he believed only a small body equal in capacity and education could probably be found to rule over the masses. A reasonable amount of virtue and capacity might be developed by education, but even then only a small number would ever become capable of ruling.[32]

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[30] *Ibid*., 1295^b, 25-40; 1296^a, 1-5.

[31] *Op*. *cit*., p. 89; cf. also Ross, *op*. *cit*., pp. 249-50. This commentator censures Aristotle for splitting society in half and having the lower (slaves and artisans) become an instrument for the welfare of the higher. The life of every human being is worth living for itself alone, and the state should secure this right for all, even those in the humblest station. Aristotle, however, is to be commended for stresing the difference in the capacity of men for living the "good" life, a factor ignored in equalitarian political theories. (Italics mine.)

This superior view may be traced to the normal feeling the Greek mind entertained toward the barbarian in matters of art, letters, philosophy and political culture. There was only contempt for the barbarians, who lived such servile lives under Eastern and other despots.[33] This view of the natural inequality of man was to run counter to the theory of natural equality propounded by Roman philosophers, especially Cicero and Seneca.[34] To these men consideration will shortly be directed.

An analysis of the political works of Aristotle serves as a reminder of the inestimable debt owed them by mature medieval thought. The magnitude of this influence should become apparent as this treatise develops. Even in instances when Aristotle's views are contravened, they enjoy the distinct tribute of serving as a frame of reference for initial philosophical speculation.

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[32] R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the West*, Vol. I: *The Second Century to the Ninth* (New York: G. P. Putman's Sons, 1903), p. 7.

[33] *Ibid.*, pp. 7-8.

[34] *Ibid.*, pp. 8-9.

Roman and Patristic Theory of the State

In the writings of Cicero and Seneca there is a firm break with the Aristotelian concept of man's natural inequality. Few changes have been more significant in the history of political philosophy.[35] If men share a natural equality by virtue of their human nature and common power of reasoning; then the theory of who is capable of governing, and the eventual source of sovereignty, will be profoundly affected.

This theory of natural equality of man had received its earliest expression from Chrysippus the Stoa in the latter part of the third century B.C. In the Athenian schools he imparted to Stoicism the basic pattern we shall see amplified in the later contributions of Cicero and Seneca.[36] To Cicero, writing around the middle of the first century B.C., attention is now directed.

Cicero's stressing of man's basic equality by no means implies a general repudiation of the Aristotelian theory of state. This will become apparent in examining the former's arguments for human equality. We must realize, observes Cicero, that we are born for justice, and right is based not on the opinion of man but on nature. This is obvious if we can grasp a clear idea of man's fellowship and union with his fellow men.[37] "For no single thing is so like another, so exactly its counterpart, as all of us are to one another."[38]

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[35] Carlyle, op. cit., I, p. 8.

[36] George H. Sabine, A History of Political Theory (3d ed. rev.; New York: Henry Holt and Company, 1958), pp. 148-50.

If men are naturally equal, then how does Cicero account for the natural differences Aristotle professed to observe? Cicero answers that were it not for the perverse habits and false beliefs that twist certain minds and turn them in a certain direction we would all be alike. He next marshalls an array of arguments to substantiate his position.

First, he contends, a single definition of man applies equally to all human beings - an impossibility if there were a difference of kind between men. Next, reason, which raises us above the beast and enables us to think abstractly, is common to all. Again, though varying in what it learns, the human capacity for learning is invariable. The sense life in every man is the same. Further, speech, while differing in the choice of words, agrees in the sentiment expressed. Finally, no human being can fail to attain virtue if he but have a guide.[39]

The similarity of man is revealed in evil as well as in good, according to Cicero. Pleasures attract all of us to vice by a certain similarity they bear to the good. Mistakenly, all of us see death as an evil and cling to life; wrongly we view pain as an evil. Troubles, joys, desires and fears plague all of us without distinction. In religious needs, superstitious or rational, we share a common bond. What greater proof of human unity is there in that all nations love courtesy, kindliness, and gratitude; condemn haughtiness, cruelty, and ingratitude?[40]

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[37] Cicero, De legibus, trans. Clinton W. Keyes, Loeb Classical Library (London: William Heinemann, 1928), i, 10, p. 329.

[38] Ibid.: "Nihil est enim unum uni tam simile, tam par, quam omnes inter nosmetipsos sumus."

[39] Ibid., pp. 329-31.

All men share a basic sense of justice, Cicero contends, but evil habits can extinguish the sparks of fire enkindled by nature; the opposite vices then take over. But if only the judgment of men would follow nature, then justice would be equally observed by all.[41]

The bond of natural law is one of the most powerful arguments for human equality; Cicero provides a masterful explanation of this law and its implications.

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting......"[42] It is wrong to try to alter or repeal any part of this law; it cannot be abolished entirely. No senate or people can free us from it; we cannot look outside ourselves for an interpretation of it. It will not operate one way in Rome, another in Athens. It is eternal, unchanging and valid for all nations and at all times. God is its author, promulgator and judge. Whoever disobeys it is merely fleeing from himself.[43]

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[40] _Ibid_., i, 11, pp.331-33.

[41] _Ibid_., i, 12, p. 333.

[42] Cicero, _De re publica_, trans. Clinton W. Keyes, Loeb Classical Library (London: William Heinemann, 1928), iii, 22, pp. 210-11: "Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna...."

The arguments Cicero advanced for the natural equality of men were to help in formulating the mature medieval belief that sovereignty in the state rests ultimately in the populace. But his contribution to political theory is much greater. We have already seen his insistence upon justice in the life of the individual. Its role in the state cannot be overemphasized.

The commonwealth, he notes, is the property of the people. In defining the state we must observe that it is not an assembly brought together in any manner, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good. Cicero will have it that the first cause of this association is not so much individual weakness as the social spirit implanted in man by nature. So natural is this social urge that man, even when extremely wealthy, craves the association of his fellow man.[44]

Again emphasizing the essential role of justice,

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[43] Ibid., p. 211.

[44] Ibid., i, 25, p. 65.

Cicero proceeds to examine the three forms of acceptable government proposed by Aristotle. All are tolerable, so long as the original bond which joined them is present. All three can make for stable rule, so long as no elements of injustice or greed are introduced.[45]

Pertinent to the medieval concept of sovereignty was the controversy concerning the monarch's subservience to law. Cicero entertains no doubts on this score. He emphasizes the fact that the function of the magistrate is to govern and to command beneficial and just decrees in conformity with law. Just as *law governs the magistrate*, so the magistrate is said to govern the people. Truly it can be said that the magistrate is, in effect, a speaking law, and the law a silent magistrate.[46]

To Seneca, writing in the middle of the first century A.D., we now turn for additional political theory relative to our theme. Following Cicero's view of the natural equality of man, he provides a penetrating criticism of slavery.

A master can receive benefits from a slave. In fact, why should the condition of man lessen the value of his service? "We all spring from the same source, have the same origin; no man is more noble than another except in so far as the nature of one man is more upright and more capable of good actions."[47]

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[45] *Ibid*., i, 26, pp. 65-66.

[46] *De legibus*, *op*. *cit*., iii, 1, pp. 459-61. (Italics mine.)

In a noble vein Seneca explains that slavery does not penetrate the entire being; the better part is exempted. Only the body of the slave is at the mercy and disposition of the master; the mind remains its own master, hence, is free. Thus, while Fortune may hand over the body to the master, the inner soul of man remains unbound.[48]

In the works of Seneca we find mention of another belief that was to figure prominently in Patristic and medieval political thought: coercive government is a penalty for man's transgressions. He speaks of a Golden Age in man's distant past, an idyllic period during which men, yet unspoiled, enjoyed peace and wonderous fellowship. In this era men followed nature and wisely subjected themselves to competent rulers, who protected the weaker from the stronger. No rulers could have been more solicitous for their subjects or kinder to them. Nor did these rulers attempt to exceed their power over the subjects who had originally granted them dominion. Later, however, avarice and other forms of vice stole into the kingdom. To control unruly subjects, benevolent kings became tyrants. The need for laws arose;

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[47] Seneca, De beneficiis, trans. John W. Basore, in Seneca, Moral Essays, Loeb Classical Library, Vol. III (London: William Heineman, Ltd., 1953), iii, 28, 1-2, pp. 176-77: "Eadem omnibus principia eademque origo; nemo altero nobilior, nisi cui rectus ingenium et artibus bonis aptius."

[48] Ibid., iii, 20, 1-2, p. 165.

the present state of chaos is the result.[49]

Following the same tradition of Cicero and Seneca were the Roman lawyers of the second and third century A.D. Their comments on slavery appear in Justinian's *Digest* of the sixth century, the great legal handbook of the middle ages. Gajus and Marcianus both contend slavery is based on the *jus gentium*, but for the former there is hardly any difference between the *jus gentium* and the *jus naturale*. These two jurists view slavery as rational and just, but do not trace its origin or attempt to justify it in Aristotle's fashion. However, at the end of the second century, Ulpian, Tryphonius, recognizing a much clearer distinction between the *jus gentium* and *jus naturale*, maintain that slavery arose from the former. In a primitive state all men were naturally free; slavery has developed from custom.[50]

Bearing significantly on our treatise is the view of the jurist, Ulpian, that the authority of the ruler is derived from the people. This opinion is quoted in Emperor Justinian's celebrated Digest, published in 533. Ulpian states that the will of the emperor has the force of law because by virtue of the *lex regia* the people transfer to him and vest in him all of their own power and authority.[51] This aspect of sovereignty will be treated in considerable detail in the course of this work.

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[49] Seneca, *Ad Lucilium epistulae morales*, trans Richard M. Gummere, Loeb Classical Library, Vol. II (London: William Heinemann, Ltd., 1953), Epis, XC, 1-6, pp. 395 and 397.

[50] Justinian, *Digest*, i, 1, 4, contains Ulpian's view: "cum jure naturali ommes liberi nascerentur... sed postquam jure gentium servitus invasit... "Since by natural law all are born free... but afterwards slavery arose from the law of nations..." (Translation mine.) Quoted in Carlyle, *op. cit.*, I, p. 47, n. 2.

Almost identical sentiments are expressed by Florentinus in the *Digest*, i, 5, 4, quoted in Carlyle, I, p. 47, n.3 and by Tryphonius in the *Digest*, X11, 6, 64, quoted in Carlyle, I, p. 47, n. 4. (Italics mine.)

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Mention of the Roman lawyers has been included because of the significant role law was to play throughout medieval political theory in determining the limitations of authority. In the biblical references to civil obedience the issue of supreme authority is dealt with explicitly.

St. Paul asserts, "Every subject must obey the government authorities, for no authority exists apart from God; the existing authorities have been constituted by God. Hence anyone who resists authority is opposing the divine order and the opposition will bring judgment on themselves."[52] St. Paul continues this theme by noting that magistrates are no terror to an honest man. The magistrate is God's servant for man's benefit. Do evil and one may well have occasion to fear the ruler, for the ruler is God's servant for the infliction of divine vengeance on malefactors. Thus one is to obey civil authority not only to forestall the wrath of

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[51] Digest, 1, 4, i, quoted in Sabine, op. cit., p. 171.

[52] Rom. 13:1-2.

God but as a matter of conscience. Magistrates are God's officers selected by Him for the maintenance of order and authority.[53]

No less definite than St. Paul is St. Peter in this matter. "Submit for the Lord's sake to _any_ human authority; submit to the emperor as supreme and to governors as deputed by him for the punishment of wrongdoers and the encouragement of honest people"....[54] Christians are to live as free men, but not make their freedom a pretext for misbehavior. They are to live like servants of God; they must do honor to all, love their brothers, revere God, and honor the emperor.[55]

These arguments would seem to demand Christian civic obedience to any type of ruler, and oppose the implicit Roman theory that the magistrate's authority stems ultimately from the people. Carlyle believes St. Paul and St. Peter in these passages wish to lay the greatest emphasis on the role of the state in the maintenance of justice as an end. As such, the civil authority partakes of divine authority, hence must be obeyed. In addition, the early Christian church was beset by an anarchism arising from two sources. The Jewish converts still nursed an intense hatred for Rome;

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[53] _Ibid._, 13:3-7. Cf. also Tit. 3:1 where St. Paul again urges the faithful to be submissive to rulers and authorities.

[54] 1 Pet. 2:13-14. (Italics mine.)

[55] _Ibid._, 2:15-17.

the gentile converts felt, as free men in Christ, they were above the demands of civil law. These anarchical attitudes might be compared to the tendencies that developed among the Anabaptists of the sixteenth century. Respect for temporal authority required proper stressing; radical tendencies had to be averted.[56] It may well be, too, that St. Paul is here stressing the Christian principle that the office rather than the holder is the one to whom the respect is due.[57] At any rate, as will be noted later, these passages were not universally interpreted as meaning that a tyrant could command unswerving obedience.

In the writings of St. Augustine we encounter some of the most provocative, though not always acceptable, contributions to medieval political thought. His theory of the state, in the main, can be culled from De civitate Dei, written in 413 A.D., just three years after Alaric and his Goths had sacked the city of Rome. Though his chief objective was to prove that Christianity was not to blame for Rome's demise, he provides political insights which were to affect Western culture for many centuries.

St. Augustine emphasizes the dual role of the Christian; he must sojourn in this temporal life, but his final goal is the attainment of heavenly bliss. Duties will be owed to the two institutions of which the pilgrim is a member; the state and the Church. The sojourner who, while still living on earth, strives toward virtue and ever keeps his sights on his heavenly goal, is a member of the City of God; one who fails to live a life of virtue, is content with this world alone, belongs to the earthly city or the City of Man. We Christians, states Augustine, live a good life to attain a blessed one. Affections such as fear, desire, grief, and rejoicing are experienced by citizens of both cities, but a good life directs these affections rightly, a bad life wrongly. There should be no doubt as to what the citizens of the City of God must be like in their pilgrimage.[58]

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[56] Op. cit., I, pp. 90 and 96.

[57] Sabine, op. cit., p. 182.

This emphasis on the superiority of the spiritual over the temporal and Augustine's insistence on the state being Christian in direction were powerful factors in the later clashes between Church and state in regard to sovereignty.

In deriving the basic right of government to exist, Augustine formulates a belief we have previously noted in Seneca's writings: man rules other men as a result of sin. Government is contrary to the primitive condition of human nature.

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[58] St. Augustine, The City of God, trans. Marcus Dods (New York: The Modern Library, 1950), xiv, 9, p. 452 and pp. 455-56. All Latin quotations are from St. Augustine, De civitate Dei, in Aurelii Augustini opera, Pars xiv, 2 ("Corpus Christianorum, series Latina," XLVIII; Turnholt: typographi Brepols editores Pontificii, 1955).

God created men to have dominion over fish, birds and the lower creatures of the earth, Augustine states. "He did not intend that his rational creature, who was made in His image, should have dominion over anything but the irrational creation - not man over man, but man over the beasts."[59] Thus, he explains, men in ancient times were made shepherds by God to indicate to us the relative position of creatures. He believes that the condition of slavery is the result of sin. Slavery is a name introduced by sin and not by nature. For, according to nature, as God originally created us, no one is the slave either of man or of sin.[60]

Yet, Augustine believes that such servitude is a proper penalty and appointed by that law which enjoins preservation of the natural order. Government, or the rule of man over man, is thus defended as a divinely appointed consequence and a remedy for sin.[61]

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[59] Ibid., xix, 15, p. 693: "Rationalem factum ad imaginem suam noluit nisi inrationabilibus dominari; non hominem homini, sed hominem pecori."

[60] Ibid., pp. 693-94.

[61] Ibid., p. 694. Cf. also Carlyle, op. cit., I, p. 130. For a varying opinion cf. Donald X. Burt, "The State and Religious Toleration" (unpublished Ph.D. dissertation, Dept. of Philosophy, The Catholic University of America, 1960), pp. 41-43. This author admits Augustine believes the correct role of the state after man's fall is important and

One can hardly escape the impression that Augustine at times views temporal government with suspicion. Nowhere is this more evident than in passages where he contrasts the types of love that exist within the two cities. The earthly city is motivated by love of self to the contempt of God; the heavenly by love of God to the contempt of self. In the former the princes, in subduing nations, rule for the love of ruling; in the latter, princes and subjects serve one another in love, the people obeying while the rulers take thought for all. The worldly city delights in the strength displayed in the person of rulers; the heavenly city looks to its strength in God.[62]

A significant facet of Augustine's political theory is his treatment of justice as essential to government. Political theorists prior to his time were unanimous in asserting its necessity. But certain scholars, as will be indicated shortly, have doubted whether Augustine would have insisted on justice as an indispensable element in government.

On the positive side we have Augustine stating that if justice is eliminated from government then kingdoms are

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necessary, but it is too much to maintain that Augustine believes the state has *only* a remedial function. (Italics mine.)

[62] *Ibid*., xiv, 28, p. 477.

no more than robberies. Robberies are but little kingdoms, for robber hands are composed of men, ruled by the authority of a prince, knit by a confederacy and bound by the manner in which booty is to be divided. As this group expands it takes on the aspect of a kingdom and assumes impunity. Augustine heightens his analogy with an anecdote attributed to Alexander the Great. It seems that Alexander was chiding a captured pirate captain for hostile possession of the sea. The latter, however, had a ready response. He noted that when Alexander seized the entire earth with a tremendous fleet, the world acclaimed him as an emperor. However, observed the pirate captain, when he seized others' possession with a small vessel, society branded him a common robber. Were the two deeds really different?[63] Here, Augustine certainly seems to be stressing the necessity of justice in the ruling power.

Later, in the De civitate Dei, Augustine refers to Scipio's definition of a republic as found in Cicero's De republica (cf. n. 42). Here a republic is cited as a weal of the people and an assemblage united by a common acknowledgment of right and a community of interests. Augustine maintains that if this is an acceptable definition of a republic then the Roman government was never a republic for the people's weal was never attained nor was justice administered.[64] He suggests that if one wishes to define a people as an assemblage of reasonable beings bound together by a common agreement as to the object of their loves, then the Roman people and their government could be considered as a republic or commonwealth. So also could other governments, such as those of the Athenians, the Greek states, the Egyptians and Assyrian Babylon. But these states, since they were not honoring the true God, could hardly be said to possess justice.[65]

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[63] Ibid., iv, 4, pp. 112-13.

Carlyle interprets the foregoing to mean that Augustine, alone among the Fathers, did not believe justice was essential to a state.[66] But, McIlwain takes a different position. The latter holds Augustine meant that justice was the only bond that could unite a true *populus* in a *real republic*. The great states before Christianity were *regna* (kingdoms) but not commonwealths.[67] Considering the overall import of Augustine's work, one is inclined to favor the latter opinion.

Relevant to an issue which was to arise during the Church-state conflict over sovereignty were Augustine's views on cooperation between the temporal and heavenly cities. Travellers of the earthly city, while not living by faith, seek earthly peace and have as their end the concord of civic obedience; they rule to attain things helpful to a worldly life. Travellers of the heavenly city, living by faith, may make use of this peace only because they must and until their mortal condition ceases. Cooperation is permissible between the two realms. Members of the heavenly city may avail themselves of this worldly peace only insofar as they can without prejudice to their faith and godliness.[68]

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[64] *Ibid*., xix, 21, p. 699.

[65] *Ibid*., xix, 24, p. 706.

[66] *Op. cit*., I, pp. 168-70.

[67] *Op. cit*., p. 159.

While Augustine stresses the superiority of the spiritual over the temporal, he emphasizes the obligation of citizens with regard to civil obedience. All authority is from God; God bestows kingly power on impious as well as pious rulers. This may not always be intelligible to man, says Augustine, but who can presume to understand God's inscrutable ways.[69]

Augustine's view on obedience to temporal authority was highly significant. St. Gregory the Great, for example, was to interpret him as meaning that a ruler, under no circumstances, was to be resisted. An evil magistrate had the same claim on a subject's allegiance and obedience as a virtuous ruler. To resist or offend any ruler is to offend God, who has placed him over men. Gregory cites with approval the instance of David's forbearance regarding the unjust king, Saul. Rulers are not to be smitten with the sword of the mouth by their subjects even when the deeds of these leaders are blameworthy. A subject who has censured such a superior should immediately do penance and might well dread the wrath of God who has placed this leader over him.[70]

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[68] _De civitate Dei_, _op_. _cit_., xix, 17, pp. 695-96.

[69] _Ibid_., V, 21, pp. 174-75.

To account for this extreme position, Sabine proposes that Gregory may be concerned, as St. Paul had been earlier, with the ever-present fear of anarchy.[71] Carlyle, however, sees the position of both Augustine and Gregory as stemming from confusion between the divine authority of the institution of government and the divine authority of an individual ruler.[72] Whatever may be the correct explanation, later medieval political theorists were to differ sharply from these early writers on the issue of the allegiance owed an unjust ruler.

Gelasian View of Church and State Sovereignty

By the fifth century the Church, having emerged as an established institution, was experiencing jurisdictional disputes with temporal authority. This turn of events was hardly unexpected. While it might be stated in principle that the Church's power should extend to the spiritual realm and the state's to the secular, the problem was by no means that simple. A spiritual writer, keenly attuned to the complexity of the issues, was Pope Gelasius I. In his writings he attempted to delineate the prerogatives of the two realms, and offered practical norms for amicable cooperation without prejudice to the rights of either. That he succeeded, to a degree, is evidenced by the appeal later controversialists were to make to his doctrine of the two swords. Frequent allusion will be made to this concept in the course of this treatise.

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[70] St. Gregory the Great, Regulae pastoralis liber, iii, 4, Patrologiae, series Latinae, ed. J. Migne (Paris: 1862), Vol. 77, cols. 55-56.

[71] *Op. cit.*, p. 193.

[72] *Op. cit.*, I, p. 169.

Gelasius is unequivocal in stating that the secular powers should learn of things divine from the bishops, especially the Pope, rather than presuming to judge upon these matters themselves.[73] The temporal power is definitely advised to confine its activities to its proper sphere.

In a section dealing with the specific powers of the two realms, Gelasius begins with a historical account. Prior to the coming of Christ, there were rulers who legitimately discharged the duties of both king and priest. Melchisidech was one such person. Christ, however, aware of human frailty and solicitous for His people, saw fit to distinguish between the two offices and separated their functions. Henceforth, each sphere would have duties and activities proper to its dignity.[74] Now Gelasius injects an important factor. Does separation of powers imply that a state of neutrality and possibly even of opposition must obtain between the realms? Not at all. The keynote is cooperation. Here are Gelasius' words: "Just as Christian emperors need the ecclesiastics for eternal life, so ecclesiastics, in the course of temporal matters, should make use of the emperor's regulations."[75] In brief, each sphere can and should make a vital contribution to the other. How sadly this recommendation was ignored as the two powers vied for supremacy will soon become apparent.

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[73] Pope Gelasius I, Beati Gelasii ad episcopos Orientales, Ep. X, 9, "Epistolae Romanorum Pontificum genuinae," Vol. I, ed. Andreas Thiel (Brunsberg: Edwardus Peter, 1868), p. 347: "si quantum ad saeculi potestatem, illa a pontificibus et praecipue a beati Petri vicario debet cognoscere, quae divina sunt, non ipsa eadem judicare."

For Gelasius, then, there are two authorities wielding power in the world: one sacred, the other royal. While he does not state specifically which is higher, he does maintain that the burden carried by priests is a heavier one. They must render an account before the divine judgment for the kings of men.[76] Rulers must look to priests for the means of salvation and submit to the judgment of the former in sacred matters. But there is another side to the coin; since the ruler's authority also stems from God, rulers of religion should obey the magistrate's laws in matters civil.

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[74] Pope Gelasius I, Tractatus, IV, 11, pp. 567-68.

[75] Ibid.: "Ut et Christiane imperatores pro aeterna vita pontificibus indigerent, et pontifices pro temporalium cursu rerum imperialibus dispositionibus uterentur." (Translation mine.)

[76] Ibid., Ep. XII, 2, pp. 350-51: "Duo quippe sunt, imperator auguste, quibus principaliter mundus hic regitur; auctoritas sacrata pontificum, et regalis potestas. In quibus tanto gravius est pondus sacerdotum, quanto etiam pro ipsis regibus hominum in divino reddituri sunt examine rationem."

Emphasizing further the more serious responsibility of the ecclesiastic, Gelasius states that a bishop remaining silent on a religious issue which should be proclaimed incurs a great spiritual danger. By the same token, an equally serious spiritual risk is courted by the ruler who, when he should obey spiritual authority, despises it.[77]

Thus it is evident that Gelasius, while mindful of the fact that these two authorities are independent of each other and that each is supreme in his own realm, realized that in practice they are dependent upon and cannot avoid relations with one another. But he is conscious of more than this. No division between the two powers can be complete - one is compelled to acknowledge that each realm, in certain relations, does have authority over the other.[78] No one claimed that Gelassius solved the problem, but his attempt provided guidelines and merited the respect of the later middle ages.

As a result of Patristic teaching and the two-sword doctrine of Gelasius, there arose the distinct medieval belief that mankind formed a single society under two governments, each with its own set of rights and laws. This arrangement was peculiar to the Christian state; it was practically unknown to the pre-Christian Greek and Roman concept of government. The Christian found himself under a two-fold duty and a two-fold citizenship. Often, unable to discern where the things of Caesar differed from those of God, the citizen found himself a victim of divided allegiance. As will be seen there was no simple solution.[79]

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[77] Ibid., p. 351.

[78] Carlyle, op. cit., I, p. 192.

Growth of Stable Government and Concept of Law

Between the sixth and ninth century the political power of Europe passed into German hands. A distinct feature of this period was the belief that law belonged to the folk, the people, or tribe as a common attribute. Law was never promulgated in written form but perpetuated by custom or by word of mouth. As German and Roman cultures mingled, the Germanic view of the personal attribute of law surrendered to the idea that law follows the locality or territory. Tribal customs began to fuse with the local community, and local customs became the law of the land.

Actually, the idea that law belonged to the people meant that law made the people a community - law was a principle of organization - rather than the view that law was made by the people. All law was enshrined and deemed to be as sacred and abiding as the providence of God. For these peoples positive law was conceived of as a proper offshoot of natural law, which governed the entire universe.

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[79] Sabine, *op. cit.*, p. 196.

Since the concept of law was destined to figure so prominently in the medieval concept of sovereignty, investigation of one aspect of law, peculiar to the middle ages, warrants our attention. However strange it may appear to the modern mind, the common medieval view was that men did not make laws; they found them, or expressed another way, they proved them. Some explanation may be in order here. If a continuous state of affairs persisted for some time, or a certain custom had gone unchallenged, it was deemed to be lawful or right. If a change were needed, it was more a matter of finding out what the old law meant and then publishing the result of this investigation as a royal decree or assize.[80] Legislation, then, was primarily a matter of confirming custom, not an expression of will; it was a mere record of that already recognized as binding on man.[81]

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[80] *Ibid.*, pp. 198-203. Cf. also McIlwain, *op. cit.*, pp. 167-71. (Italics mine.)

[81] R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the West*, Vol. III: *Political Theory from the Tenth Century to the Thirteenth* (New York: G. P. Putman's Sons, 1916), p. 41.

Relevant to our investigation is the medieval concept of the king's position with regard to law. A host of questions suggest themselves. Was he the source of law? Could he ignore it? Was he beyond its pale? Political theorists of the period would have had little difficulty answering these questions.

Bracton, the famous English jurist of the thirteenth century, contributed enormously to the common consensus that the king is certainly bound by law and by justice. The famous maxim, "Quod principi placet, legis habet vigorem" (Justinian's, Digest, 1, 4, 1), was well known to Bracton, but he definitely does not interpret this principle as a license for a king to rule capriciously. That alone is true law which is determined upon with the intention of being made a law, with the authority of the king, with the advice of his magistrates, and after due consideration and deliberation. The authority of the king is that of law (or right), not of wrong. Moreover, a king's title arises from his ruling well; he is no more than a tyrant when he oppresses the people. Let him restrain his authority by law, which should be his bridle.[82]

Carlyle expresses well the common view of the middle ages that law was the practical form of justice and in its maintenance men found the security for justice and all that was good in life.[83] Where there was no law, there was simply no authority. Two excerpts from Bracton's works attest to the supremacy of law: "There is no king where will rules and not law".... "The king, however, ought not to be under man but under God and under law, because *law makes the king*...."[84]

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[82] Henricus de Bracton, De legibus et consuetudinibus Angliae: libri quinque, ed. Sir Travers Twiss (6 vols; London: Longman & Co., 1878), iii, 9, 2 and 3, Vol. II, pp. 170, 172, 174 and 176.

On the matter of medieval regal power the question regarding the consent of the governed naturally suggests itself. Law was declared in the name or consent of the people or one who represented them. Charlemagne used the term "with their consent and counsel" in referring to the prelates, nobles, and subjects who assisted him in enacting laws.[85] In the eleventh century we have a similar instance of a ruler consulting his subjects in matters of legislation. Godfrey of Bouillon, as the new leader of Jerusalem, with the advice of the Patriarch, princes, and wise men, strove earnestly to find out about the best customs of the various peoples residing there and framed his laws accordingly.[86] These are but a few of many instances that could be elicited to prove this contention.

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[83] *Op*. *cit*., III, p. 37.

[84] Bracton, *op*. *cit*., i, 8, 5, Vol. I, p. 38: "non est enim rex ubi dominatur voluntas et non lex".... "Ipse autem rex, non debet esse sub homine sed sub Deo et sub lege, quia *lex facit regem*..." (Italics mine.)

[85] Sabine, *op*. *cit*., p. 204.

[86] Jean d'Ibelin, *Assizes of Jerusalem*, CXI. Quoted in Carlyle, *op*. *cit*., III, p. 44.

Allied with this medieval notion of popular consent was the general conviction that an unjust ruler could be resisted. The key to this position is seen in the medieval notion of how a ruler acquired his authority. Though vague, the prevalent view was that a king received his title and power by (1) inheritance, (2) election, and (3) by the grace of God. Confusing though this may be to the modern mind, all three titles were thought to prevail simultaneously, not separately.

For the medieval political theorists secular rule was of divine origin; the king, then, was a vicar of God. Anyone resisting the regent unlawfully was a subject of the devil, and, *ipso facto*, an enemy of God. However, this notion is not to be confused with the "divine right of kings" doctrine of later centuries. St. Gregory the Great's passive obedience doctrine, to which we have alluded earlier, was not thought to apply to unjust and tyrannous kings. In fact, the people were thought to have both a moral and a legal right to resist an unjust ruler under certain circumstances.[87] These circumstances will be discussed later in greater detail.

To our day has persisted the common impression that in the middle ages men looked upon authority as irresponsible, that they viewed the ruler as one who exercised a capricious and almost unlimited authority over his subjects, and that men had little knowledge of or cared for any rational principles of social organization. No view could be more erroneous. If medieval society seemed to oscillate between arbitrary despotism and anarchical confusion, this condition resulted not from a lack of conviction regarding the rights and duties of rulers and subjects but from an absence of an effective instrument of government.[88]

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[87] Sabine, *op. cit.*, pp. 210-13.

It has been the purpose of this section to stress that law, to the fuedal jurist, was the expression of justice; it was supreme in the state. The ruler himself was the servant of that law.

If one is to understand the middle ages he must abandon the common conception of sovereignty, namely, the conception that a law represents no more than the mere command of a lawgiver, or even of a community. Such a view would have been totally incomprehensible to the middle ages.[89]

It is true that as early as the thirteenth century there begins to emerge the concept of laws being "made". In this view Carlyle sees the modern conception of sovereignty beginning to take form, that is, "the conception that there is in every independent society the power of making and unmaking laws, some final authority which knows no legal limits, and from which there is no legal appeal."[90] Yet, it appears quite certain that, on the whole, this modern conception was foreign to common medieval theory.

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[88] Carlyle, op. cit., III, pp. 30-31; cf. also Henry O. Taylor, The Mediaeval Mind (4th ed., 2 vols.; London: Macmillan and Co., Ltd., 1930), II, pp. 306-309. This latter author explains that common medieval opinion sanctioned: a limitation of royal power through God's natural law; a theory of community rights; disobedience to unjust royal decrees; and law as the source of rights befitting the dignity of a person in the Christian revelation.

[89] *Ibid*., p. 41.

From the foregoing it is apparent that in theory the medieval king's relation to law was clearly understood. He was to approve and maintain law, not make or break it. He was to establish laws with the counsel of his magnates and others who knew law, but this process must be correctly understood. There was no sovereignty implied in this counsel, and it is not the same as the "consent" of a modern constitution. What was involved in "counsel" was knowledge, rather than authority. A feudal king was king, not just by ruling, but by ruling well. Ruling well was realized in defending the Church, preserving peace, enforcing rights, tempering justice with mercy, and maintaining ancient law.[91]

To appreciate the medieval concept of sovereignty we must disabuse ourselves of inaccurate accounts and false impressions of that period. In both medieval monarchy and feudal relations, theory was one thing, fact another. There was no higher concept of kingship and government than that of the middle ages, yet strife, injustice, and oppressive rulers abounded.[92] As McIlwain points out: "The main political defect of the time was not a lack of principles, but an almost total absence of any sanction for them..."[93] If we are inclined to associate the theory of political absolutism with the middle ages, we err. It is an achievement of modern times; the middle ages wanted none of it.[94] In our system of constitutional limitations we have improved on more effective means of governmental control, but not on the nobler ends established by the middle ages.[95]

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[90] Ibid., p. 45.

[91] McIlwain, op. cit., pp. 194-96.

In this chapter an effort has been made to enunciate and explicate the principles which underlay the medieval notion of sovereignty. The degree to which fully developed medieval political thought depended on ancient, Patristic and early medieval contributions will become apparent as our four authors are treated in detail.

While it is not necessary to run the full gamut of the principles presented, a resume of certain key elements which later became crystallized medieval political tenets would not be amiss. One was that law was the custom of the community, not primarily the deliberate or conscious will of the community. Even in the ninth century, and later in the twelfth and thirteenth century, under the revived study of Roman law, the concept of law as the will of the community was restrained and limited by natural law - the embodiment of the principle of reason and justice. From the ninth century onward it is clear that the function of king is to maintain justice. Further, the only true authority is a just one; the state can have no other end than justice. The king is the servant, not the master of law. Absolutism, or modern unlimited sovereignty, was not conceived of as belonging either to a ruler or a community. And lastly, law, which is the form of justice, is understood not as the preogative of the king alone but is established with the agreement and consent of the community.[96]

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[92] *Ibid.*, p. 197.

[93] *Ibid.*

[94] *Ibid.* Cf. also Sabine, *op. cit.*, p. 222.

[95] *Ibid.*, pp. 199-200. (Italics mine.)

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[96] R. W. and A. J. Carlyle, A History of Mediaeval Political Theory in the West, Vol. V: The Political Theory of the Thirteenth Century (New York: C. P. Putnam's Sons, 1928), pp. 457-58. Cf. also Ernest Cassirer, The Myth of the State (New Haven: Yale University Press, 1946), p. 104.

CHAPTER II

DEVELOPMENT OF CHURCH AND STATE CLAIMS TO SOVEREIGNTY

Events Leading to the Lay Investiture Controversy

Before launching into a presentation of the contribution made by John of Salisbury to this subject, it is necessary to trace briefly the course of Church and state relations prior to his political writing. His work appeared shortly after the middle of the twelfth century. To understand it properly - or for that matter the theories developed by any of the other major writers in this treatise - one must be cognizant of the contemporary status of the Church-state controversy.

From the dawn of civilization religion seems to have been related in some measure with political power. On the assumption that government ought to be more than military despotism, the religious element became entrenched in Asia and in Egypt. A divinity cult concerning the personage of the king emerged and thrived. Some kings were officially worshipped as gods following their death, but many were acclaimed as divine even during their lifetime. Beginning with Alexander the Great, Hellenic kings were enrolled among the gods of Greek cities. So pronounced did the institution of defying kings become that the Roman emperors themselves eventually adopted the policy.

This royal deification was scarcely repugnant to the Greek mentality, schooled as it was in the lore of demigods and accustomed to assigning this honor to heroes and lawgivers. The practice had immediate practical benefits from a purely political standpoint. Investing the ruler with divinity lent unity and homogeniety to the state and enshrined the ruler's authority with some claim of right. It served to perpetuate the king's law beyond his own lifetime. Moreover, the conferring of such religious titles as "Savior" and "Benefactor" on sovereigns might have been genuine expressions of gratitude by subjects who had been ruled wisely. A final reason for deification could conceivably lie in the fact that if the king ruled harmoniously he paralleled God's role of ruling the universe harmoniously.

It would be difficult to determine how much of the cult of the emperor was a sincerely motivated expression and how much was political expediency. However, it seems evident that it served as a powerful prop for imperial authority and was heartily endorsed by emperors and supporters of the imperial regime.[1] Every Roman emperor from Augustus to Valentinian was Pontifex Maximus, even though the later ones had embraced Christianity.[2]

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[1] Sabine, op. cit., pp. 147-48. Cf. also McIlwain, op. cit., pp. 140-41.

Any serious clash between the interests of the state and religion had not been experienced by either Greeks or Romans prior to Christianity. Most religions had been absorbed, or at least tolerated, by Rome; but certain tenets, peculiar to Christianity, made this impossible. Christian thought posited in man a two-fold duty: a duty to God and a duty to Caesar. There was no doubt about the former being superior. A pagan could believe that the highest duties of religion and state were centered in the emperor and that he should be revered accordingly; the devout Christian, believing that spiritual allegiance belonged only to a transcendent God would have to deny the Roman claim. This was the first clash between Church and state domains.[3] This conflict was to trigger the persecutions which plagued the early Church for several centuries.

When the empire became Christian the problem acquired a new slant. Persecution had ceased, but jurisdictional intervention by either the temporal or the spiritual power began to occur. In the fourth century the Emperor Constantine claimed and exercised the power of determining Church doctrine and punishing as a heretic anyone who disagreed with him. Here McIlwain sees the beginning of the famous principle, *cujus regio*, which Hobbes and others were to enunciate later.[4]

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[2] McIlwain, ibid., p. 143.

[3] Sabine, op. cit., pp. 183-85

Since the Church had arisen from such feeble and lowly origins and had been subjected to such violent persecutions, it must be admitted that the Church leaders, to insure the very survival of Christianity, had entrusted its direction to the emperor's control. But this control was envisioned as an expedient to meet a temporary situation; it was not to be a permanent arrangement. The practice did make it possible for certain ministers within the Church to be intrusted not only with the spiritual functions, but also the temporal direction of the Christian commonwealth.[5]

On the score of preserving the Church's prerogative in matters spiritual it comes as no surprise to find St. Ambrose in the fifth century subjecting the Emperor Theodosius to spiritual censure. The latter is excluded from reception of the Eucharist for permitting a massacre in Thessalonica. Ambrose insisted on obedience to the civil authority by all Christians, priests and law alike, but he made it equally emphatic that the Church's ministers have jurisdiction over all Christian men in religious matters.

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[4] *Op. cit.*, p. 142; cf. also Louis Duchesne, *Early History of the Christian Church*, Vol. II: *The Fourth Century* (4th ed.; London: John Murray, 1950), pp. 86-88; 92-97; 109-16 and 122-24.

[5] *Ibid.*, pp. 145-47.

The Emperor is to be no exception.[6]

St. Augustine's view of the superiority of the spiritual realm over the temporal has been dealt with in the introduction of this work. There, also, was treated the unique view of St. Gregory the Great to the effect that even the decrees of an unjust ruler must be obeyed. It is worthy of mention that Pope Gelasius I, to whom allusion was made earlier, actually expounded his two-sword theory in the course of a series of letters in which he was rebuking the Emperor Zeno.[7]

On the subject of conflicting authority between the two spheres, there can be little doubt that Charlemagne, crowned in the year 800, considered both churchmen and laymen as his subjects and proceeded to take full responsibility for the government of the Church.[8]

One of the leading elements that contributed to the problem of Church and state tension was the system of feudalism. Its influence was most extensive from the ninth through the eleventh century, though it began much earlier than this. The Church became involved when Charles Martel feudalized Church property to finance his wars with the Saracens. Churchmen, as owners of land, now owed feudal services to the king and in turn had vassals who owed them services. The system became widespread and soon witnessed clergyman deeply involved in secular politics. These churchmen were magnates no ruler could ignore. But even had feudalism never developed, the absorbtion of the clergy into political positions would have occurred anyway. The superior education and training of churchmen rendered them the most eligible group from which a ruler could select competent state officials. As such they were used. By the eleventh century members of the higher clergy were so involved in state positions that it was almost impossible to separate or delineate their previously separate functions.[9]

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[6] Carlyle, op. cit., I, pp. 180-84.

[7] Ibid., pp. 186-92.

[8] Sabine, op. cit., p. 227. Cf. also Joseph McSorley, An Outline History of the Church by Centuries (4th ed. rev.; St. Louis: B. Herder Book Co., 1945), p. 137; pp. 197-98 and p. 224.

The threat to the Church's independence is easily perceived in such a situation. Matters worsened. The problem erupted into open conflict in the eleventh century. The real issues concerned whether the king could freely choose and control his vassals without clerical interference, and whether, at the same time, the Church could exclude from divine office those candidates whom it considered unworthy. Since it was now practically impossible to distinquish between the regnum and the sacerdotium, as Pope Gelasius had striven to distinguish, the situation demanded stringent measures.[10]

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[9] Sabine, ibid., pp. 186-92.

[10] McIlwain, op. cit., pp. 203-04.

Simony was rife when Gregory VII mounted the papal throne in 1073. His immediate objective was to eradicate the system whereby secular rulers exercised a voice in the selection of bishops. Known as "Lay Investiture", this practice was prohibited by Gregory in 1075. Angered by the Pope's action, the Emperor Henry IV, in 1076, endeavored to depose Gregory. The latter countered by excommunicating Henry and relieving his vassals from their oaths of fealty to the monarch. In 1080 Henry attempted to replace Gregory with an anti-pope and Gregory responded by supporting the claims of Rudolph of Swabia to Henry's throne.

The controversy continued after the death of the original disputants; however, a partial compromise was effected at the Concordat of Worms in 1122. The emperor was to surrender the technical right of investiture with the ring and staff, the spiritual symbols of office, but he still retained the right to confer the *regalia* and to exercise a voice in the selection of bishops. The conflict was by no means settled; it was to continue along similar lines to the end of the twelfth century.[11]

While the claims of Gregory VII in regard to papal power do not seem to have been in excess of those traditionally held by the Church at that time, certain of his writings may have conveyed a different impression. One of them, a letter to Bishop Hermann of Metz in 1081, did little to improve the image of secular power:

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[11] Sabine, *op*. *cit*., pp. 231-32.

> Who does not know that kings and leaders had their origin in those who, forgetful of God, attempted with blind greed and intolerable presumption to dominate their equals, namely men, by means of pride, rapine, deceit, and murder and almost every type of crime, being so aroused by the prince of the world, the Devil?[12]

Though the language used by Pope Gregory may seem excessive, McIlwain agrees with Carlyle's view that we must refrain from reading into Gregory's statements more than is warranted. He is not trying to establish the papal power as supreme over the temporal. Gregory is acting as the pastor of the flock of Christ and, as such, he must take all precautions to see that no harm befalls it. To forestall such harm the Pontiff might find it necessary to resort to such extreme measures as deposing an emperor. Secular government was not evil in itself; such government might have originated because of evil but, as such, was still divinely ordained.[13]

It might be inferred that Gregory's writings meant that he was demanding for himself an authority free of the law, a power to change Church law, a "legislative" power which would be "sovereign" in the modern sense of the term. However, such a contention would have stultified Gregory's entire argument. It is the conviction of McIlwain that the Pope was claiming no more than a spiritual supremacy, and if this claim involved acts of interference in secular government Gregory was not implying that direct temporal authority ordinarily rested in his hands. It was an "indirect power" only and never to be exercised except for a spiritual end: the type Cardinal Bellarmine was to advocate in the sixteenth century.[14]

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[12] Das Register Gregors VII, viii, 21, ed. Erich Caspar ("Monumenta Germaniae Historica, Epistolae Selectae," Tomus II, Fasciculus II; Berlin: Apud Weidmannos, 1923), pp. 552-53: "Quid nesciat: reges et duces ab iis habuisse principium, qui Deum ignorantes, superbia rapinis perfidia homicidiis, postremo universis fere sceleribus mundi principe diabolo videlicet agitante, super pares, sclilicet homines; dominari caeca cupidine et intolerabili praesumptione affectaverunt?" (Translation mine.)

[13] McIlwain, *op. cit.*, p. 208.

The controversy between Church and state authority was still unresolved by the middle of the twelfth century, the period during which John of Salisbury, the first of the writers to be treated, penned his epic work.

John of Salisbury on Political Rule

The Dignity and Responsibility of the Ruler

Considered the first systematic political treatise of the middle ages, the Policraticus was completed by John of Salisbury in 1159. The author was an Englishman, eminently qualified by learning and experience to express his views in political philosophy. He had moved in the circle of the mighty and could list as acquaintances bishops, kings, and even popes. In fact, he wrote the Policraticus while serving as secretary to Archbishop Theobald. The work is significantly dedicated to his friend Thomas Becket, Chancellor of King Henry II. It is thought that this dedication to a prominent court official evidenced an attempt on John's part to ingratiate himself with King Henry. John was in royal disfavor for having denounced the king's policy of taxing the clergy to finance a recent military campaign against Toulouse.[15] Proof that the Church and state controversy was still a smouldering issue is seen in the tragic death of this same Becket at the hands of Henry's soldiers scarcely more than ten years later. The former died a martyr to the cause of Church independence, becoming a classical symbol of heroic ecclesiastical resistance to secular encroachment.[16]

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[14] *Op. cit.*, pp. 217 and 220.

In the Policraticus is found expression of some of the highest principles of medieval political thought. This work leaves little doubt about the lofty policies and goals that were supposed to characterize the ideal Christian monarch of the era. In its frank exposition of the limitations imposed on political authority, it provides an excellent insight into the medieval concept of sovereignty. Many of the political theories, with whose origins the earlier part of this work has been concerned, receive skillful development in the pages of the Policraticus.

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[15] E. F. Jacob, "John of Salisbury," The Social and Political Ideas of Some Great Mediaeval Thinkers, ed. F. J. C. Hearnshaw (New York: Henry Holt and Company, 1923), pp. 57-58.

[16] McIlwain, op. cit., p. 228.

Though John of Salisbury's fame is linked most prominently, in most minds, with his advocacy of tyrannicide, few writers surpass him in extolling the dignity and the responsibility of the ruler's role in the state. John explains that it is the prince who must bear the burdens of the entire community. True, he bears the power of all in his hands, but only insofar as he may be sufficient unto himself in bringing about the advantage of all and for the end that the state may be ordered in the best possible manner.[17]

In John's opinion so exalted is the ruler's dignity that he may be regarded as a likeness on earth of the divine majesty. That the prince can administer capital punishment and be an object of fear is, indeed, the will of God.[18]

There can be no doubt that the author believes in the divine origin of temporal rule. The prince is placed at the head of the commonwealth by divine governance and preferred above all. He may be chosen in various ways;

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[17] Policraticus, iv, 3. This and succeeding selections, unless otherwise noted, are taken from an edition entitled, The Statesman's Book of John of Salisbury (Being the Fourth, Fifth, and Sixth Books, and Selections from the Seventh and Eighth Books of the Policraticus), trans. John Dickinson (New York: Russell and Russell, 1963), p. 3.

[18] Ibid., p. 4.

sometimes by God's providence, sometimes by the decision of priests, and sometimes by the vote of the whole people concurring in granting him his authority.[19]

In keeping with his high regard for the head of state John equates the happiness of the community with that of its ruler. He observes that the happiness of no body politic can be lasting unless the head is preserved in safety and vigor and is capable of caring for the wellbeing of the entire body. Unless the ruler's welfare is safeguarded, disaster will result. Adduced as proof for his contention is the account in the *Aeneid* of the desolation visited on Carthage when Queen Dido carelessly placed her trust in Aeneas.[20]

In the light of the foregoing, it is not difficult to appreciate John's abhorrence of treason. Believing as he does in the unity of the head with its members, he regards treason as the sin nearest to sacrilege. "For as the latter is an attempt against God, so the former is an attack upon the prince, who is admitted to be as it were the likeness of deity upon earth."[21] This crime of *lèse*

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[19] *Ibid*., v, 6, p. 83.

[20] *Ibid*., vi, 22, pp. 247-48.

[21] *Ibid*., vi, 25, p. 259: "Quia, sicut illud Deum attemptat, ita et istud principem, quem constat esse in terris quandam imaginem deitatis." All Latin quotations are from Joannis Saresberiensis, *Policraticus*, ed. Clemens C. I. Webb (2 vols.; Oxford: e Typographeo Clarendoniano, 1909). N.B. The medieval spelling of Latin words in the

majesté assumes such heinous proportions that the death itself of the traitor does not erase the stain. After his death his memory is condemned and his possessions are forfeited by his heirs.[22]

John continues in this vein of heaping praise on the kingly state. He observes that if a prince were to permit abuses against God and the Church that such practices would be so foreign to his expected duty that one might say the ruler either did not perceive them, was asleep, or at an inn on a distant journey. The sun rises over all, so that the prince may be able to see and judge all. In a hyperbolic burst of praise, John says he believes the prince is truly another sun.

To the prince belongs the responsibility of extending religion, abasing the proud, exalting the humble, being sparing to the wealthy, meting out reward for virtue and punishment for vice in an equitable manner. Justice should walk before him and set his way in prudence. John quotes Proverbs, XXIX: 14, to the effect that a prince is a dispenser of honor, and as long as he rightfully dispenses his power he shall possess a perpetual power of distributing rewards. The prince rules rightly when the people

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Policraticus will be cited exactly as they appear in Webb's edition. This same policy will be followed in quoting later from Egidius Colonna's _De regimine principum_ and _De ecclesiastica potestate_.

[22] _Ibid_.

are happy and the land rejoices in equity. Again the image of the prince as the likeness of God is employed, and John asks who would dare offend against a ruler bearing such an exalted resemblance.[23]

From the sixth book of Justinian's *Novella*, John quotes a passage in which the priest and the emperor are extolled as the two greatest gifts of God. One is to minister matters divine, the other human. Both powers, however, proceed from the same source to improve the life of man.[24]

It was deemed advisable to set forth in detail John of Salisbury's laudatory appraisal of the monarch's role. Later when one encounters his apparently extreme view of punishing unjust rulers, it might be conjectured that he harbored an innate aversion to princely power. However, he will merely be expressing the characteristic medieval loathing for the arbitrary exercise of power. The loftier the position, the more hateful its degradation. Monarchy possessed its limitations, and John set them forth unequivocally.

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[23] *Ibid.*, vi, 26, pp. 266-67. (It is worthy of note that John's frequently used analogy of the ruler as "the likeness of the deity" is employed also by Jean Bodin, who was to champion modern sovereignty for the ruler in the sixteenth century. The latter calls the prince "l'image de Dieu." Cf. *De la republique* (Paris: Chez Jacques du Puys, 1583), Book I, chap. 8, pp. 156 and 161.)

[24] *Ibid.*, vii, 20, p. 302. Cf. also iv, 3, p. 11.

The Bond of Justice and Law Limiting Sovereignty

Throughout his political treatise John never tires of stressing law as the bridle for the monarch. He observes that between the tyrant and the true prince there is this singular difference, namely, that the latter obeys the law and rules the people in conformity to its dictates, accounting himself nothing more than the servant of his subjects.[25]

But if respect for law is an indispensible attribute of the ideal ruler, no less essential is the need for justice. In speaking of the great respect due the king, John states that it is to the advantage of the people that the ideal ruler's needs be satisfied since it is impossible that his will be opposed to justice.[26]

The Code of Justinian (1, 14, 4) is quoted to the effect that it is worthy of the majesty of royalty that the prince acknowledge himself bound by the laws.[27] Here are John's words: "For the authority of the prince depends upon the authority of law."[28] To submit his government to law and to do nothing at variance with justice is a far greater accomplishment for a prince than the wielding of imperial power.[29]

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[25] *Ibid.*, iv, 1, p. 3. (Italics mine).

[26] *Ibid.*, p. 4.

[27] *Ibid.*, p. 5.

[28] *Ibid.*; "Quia de juris auctoritate principis pendet auctoritas."

[29] *Ibid.*

John, having consorted with kings, displays an acute sensitivity to the prerogatives of royalty. To allay their fears, he observes that princes should not think it detracts from their dignity to have God's justice and equity preferred before theirs. The justice of God is everlasting; His law is equity.[30]

But if John is to limit sovereignty by law he must counter the classical maxim: "*Princeps legis nexibus dicitur absolutus*." His explanation is both ingenious and convincing. This expression is not true in the sense that it is lawful for the king to commit unjust acts, but only in the sense that his character should be such as to induce him to practice equity, not through fear of the law's penalties, but for the love of justice. This same motive should prompt the ruler to promote the advantage of the commonwealth and the good of others in preference to his own will.[31]

But, the author muses, in respect to public matters, can one properly speak of the prince's will. Another classical phrase hinting at arbitrary power on the ruler's part is here being challenged: "*Quod regi placet legis vigorem habet*." Actually, John answers, the prince may not have any will of his own apart from that which the law or equity enjoins. When we say that what pleases the king has the force of law, we mean that his decision may not be at variance with the intention of equity. The prince, then, is the minister of the common interest and the bond servant of equity; he bears the public person in the sense that he punishes the evil of all with even-handed equity.[32]

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[30] *Ibid.*, iv, 2, p. 6.

[31] *Ibid.*, p. 7.

Reluctant to leave the theme that the prince is not free of law, John supports his argument by quoting from Scripture (Deut. 17:14 ff.) to the effect that the law of God is enjoined upon all princes. The salutary admonition of the Emperor Theodosius on this same point, as expressed by Claudian, is presented next. In effect the emperor advises monarchs first to obey their own decrees, then the people will be more observant of that which is just. They will scarcely deny obedience to a decree when they witness the author himself obeying his own commands.[33]

Foremost among the types of law with which the prince should be familiar is divine law. Although he may enjoy many privileges, he is not, on the pretext of military duties, to be ignorant of the law of God. It is true that the first law is conceived of as written in stone, but the second is inscribed on the pure intelligence of the mind. The ruler is to attend not to the letter of the law alone, for that killeth, but to the spirit which gives a mediating interpretation of human law and equity. Let him not forget that every censure imposed by law is vain if it does not bear the imprint of divine law.[34]

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[32] *Ibid.*

[33] *Ibid.*, iv, 4, pp. 15-18.

To Old Testament accounts, John turns for illustrations of rulers who confessed that their crowning glory consisted in this alone, that seeking the glory of God, they subjected themselves and their followers to the bonds of divine law. David, Ezechias and Josias were of this number. In the early Christian period such emperors as Constantine, Theodosius, Justinian, Leo, and other Christian princes took pains to insure that the most sacred laws, which were binding upon the lives of all, should be known and kept by all. Theodosius' submission to clerical censure at the hands of St. Ambrose is cited as a commendable example of a ruler's subjection to the justice and laws of God.[35]

To be acquainted with the law is a more serious obligation for the ruler than for the priest. The priest is not always bidden to read the law daily, but this is expected of the prince. Should the latter be illiterate, he should seek out scholarly clerics who can assist him in this venture.[36]

The next commandment that the prince should learn is the one demanding that he fear God as well as keep God's words, as prescribed in the law. This is the fear of God considered as the beginning of wisdom.[37]

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[34] Ibid., iv, 6, p. 24.

[35] Ibid., pp. 26-27.

[36] Ibid., p. 28.

John mow undertakes to distinguish between types of laws that are perpetually binding and those that may be altered or abolished as circumstances dictate. "What thou wouldst should be done unto thee, do that unto others" is an example of the former. Such perpetual laws cannot be broken - not even by the ruler. There are whitewashers of princes who proclaim that the ruler is not subject to law or that what pleases him has the force of law without any restrictions. Against such adherents and princes John says he will most vehemently insist that such a ruler is no more than an outlaw. Moreover, to the entire world he will solemnly proclaim that all rulers are bound by law. The heaviest judgment against such misguided leaders would be to have their subjects direct this same disregard for law against these very rulers. In the same breath John asserts that he would deny to kings the power of dispensing with law. Certainly, laws that carry perpetual injunctions should not be subject to the king's pleasure. In the instance of flexible laws, he would permit royal dispensation, provided that the purpose of the law be preserved and there be no consequent harm to propriety and public utility.[38]

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[37] Ibid., iv, 7, p. 32.

In that section of the Policraticus where he inveighs bitterly against simony, John clearly portrays the evils of unwarranted dispensation from law on the part of the monarch. Though Ambrose severely condemned the procuring of ecclesiastical positions through royal patronage, many are holding that he meant this only for his time and age. They quote St. Cyril as noting that a certain freedom in dispensing from law was never offensive to any man of wisdom. But, John observes caustically, it so happens that the relaxation of canons seems to apply generally to the rich, the noble, the powerful, and those holding position at court. Apparently these classes are children of justice and so guided by the Holy Spirit that there is no need for them to be included under the law. These deceivers eagerly invoke the maxim that law should ordain what pleases the legislator. They enjoy the privilege of a prince's good graces and seek through him to make lawful their ill-gotten gains.[39]

Pursuing further the subject of those who engage in simony by currying favor with the prince, John again introduces the two principles that support unbridled sovereignty. These unworthy candidates for sacerdotal offices contend also that the prince is not subject to the law and what pleases the prince has the force of law. Thus, if the prince has selected them - unqualified though they be - for certain positions, who can assail the legality of the choice? In addition, these scoundrels maintain that the populace has conferred its authority on the prince, therefore it would be the crime of *lèse majesté* to oppose his will. It would be tantamount to sacrilege to object to the ruler's choice of such churchmen. Their final argument is equivalent to legal positivism: there is no law superior to civil law.

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[38] Ibid., p. 32.

[39] Ibid., vii, 17, p. 286.

John is bitter in his denunciation of these arbitrary concepts of law, so foreign to common medieval theory. He quotes Anacarsis Cithica as saying that such laws, like webs of spiders, catch flies and gnats but allow birds and larger insects through. Such civil laws restrain the wills of the humbler but give way to the more powerful. These laws do not exact punishment for disobedience from the latter. Those who champion the view that all things are lawful for the ruler actually draw their arguments from the examples of tyrants. Closer investigation will reveal that these despots ruled in areas where ancient custom prevailed, but this custom was contrary either to reason, or to law.[40]

As one delves deeper into John's political theory, he can scarcely escape the conviction that this great medieval mind entertained an almost religious reverence for the dignity of law. In the final chapter of the Policraticus, when inveighing against the evils of tyranny, he reiterates the view that a tyrant, as the philosophers describe him, is one who oppresses by force while the prince is one who rules according to law.[41] There follows next a singularly moving tribute to the subject he prizes so highly. "Law is the gift of God, the model of equity, a standard of justice, a likeness of the divine will, the guardian of well-being, a bond of union and solidarity between peoples, a rule defining duties, a barrier against the vices and the destroyer thereof, a punishment of violence and all wrong-doing."[42]

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[40] *Ibid*., vii, 20, pp. 307-08.

Law is assailed by either force or fraud. In either case it is God who is being challenged to battle.[43]

In exploring further the subject of tyranny John comments that the prince fights for law and the liberty of his people; the tyrant brings law to naught and enslaves his people. The prince, then, is the likeness of divinity;

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[41] Ibid., viii, 17, p. 335.

[42] Ibid.: "Porro lex donum Dei est, aequitatis forma, norma justitiae, divinae voluntatis imago, salutis custodia, unio et consolidatio populorum, regula officiorum, exclusio et exterminatio vitiorum, violentiae et totius injuriae pena."

[43] Ibid.

the tyrant the likeness of Lucifer.[44] The will of the true ruler is rooted in the law of God and does not prejudice liberty, but the will of the tyrant is enslaved by desire and rebels against the law, which cherishes liberty. The tyrant is one who tries to impose a yoke of slavery on his fellow slaves.[45]

John recalls that during the reign of King Stephen Roman laws were prohibited in England. Even the possession of law books was forbidden by royal decree. Did this spell the end of law? Not at all. Through the power of God the virtue of law was actually more solidly entrenched in proportion to the impious efforts made to erase it.

An Old Testament king, Gedeon, is now proposed as an example of moderation. This ruler contended that the leader's greatest solicitude should be to proclaim the word of law; if this be done properly the populace will be content to obey him. John concurrs.[46]

As has been indicated earlier, this author, true to normal medieval tradition, insists that justice is correlative with law and absolutely essential to legitimate ruling authority. It need hardly be mentioned that the prince is not to seek his own interest but that of others. But, John says, the love which the prince bears his brothers should not prevent him from correcting their errors with proper medicine. The Emperor, Trajan, exemplified this capacity for ruling prudentially. Just as a skilled cithern player must continually be tuning his instrument, so the prince should moderate his control, now with justice, now with mercy, to bring all his subjects together harmoniously as members of one household.[47]

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[44] _Ibid_.

[45] _Ibid_., viii, 22, p. 394.

[46] _Ibid_., pp. 396-97.

Justice and godliness are different virtues, admittedly, but both are necessary for a prince or any magistrate. To omit them is to merit the mockery, the hatred, and the scorn of others. It belongs to the king to meditate ceaselessly on wisdom in order that in his dispensing of justice, mercy may not be lacking.[48]

Because of his pre-eminent position the ruler enjoys a distinct advantage in regard to furthering virtue. Certainly, God will reward more abundantly the works of him who trained all men in justice when he could have led them to destruction and death. Moreover, as the mighty shall suffer mighty torments for their transgressions, so shall they enjoy more richly the rewards of justice. In the life to come these righteous rulers should surpass their subjects in glory since the former, by virtue of their position, had a greater opportunity for sinning. What a source of gratification it must be for a righteous ruler to reflect that the happiness he enjoys here will be but a foretaste of that promised him in eternity![49]

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[47] Ibid., iv, 8, pp. 37-39.

[48] Ibid., p. 40.

John labors under no delusions about God's punishment being levelled summarily on unjust rulers. In the Old Testament such punishment took the form of having royal power transferred from one family to another (Eccli, x, 8). He takes time to explain that justice, in keeping with the Stoic notion, is not just refraining from doing harmful deeds; it consists also in preventing others from acting harmfully.[50] Rulers have a heavy responsibility in this respect. Since the prince has the power to correct all, he is deservedly regarded as a participant in all injustice that he neglects or refuses to correct. If the parts of government are regarded as members of the prince's body - and John subscribes to this analogy - then the prince, in preserving each office, is actually preserving the health of his own members. He, as the head of the body politic, will not long remain healthy once sickness is allowed to attack the members.[51]

Living in an age when monarchy was the acceptable mode of government, our author considers the morality of royal succession within the same family. He feels that it is not right to pass over, in favor of new men, the blood of princes. There is ample evidence from Scripture that royal succession was warranted by divine promise and legitimate family claims. But, he notes, there was always a provision: these successors must walk in the ways of justice.

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[49] Ibid., iv, 10, pp. 46-47.

[50] Ibid., iv, 12, pp. 57-59.

[51] Ibid., pp. 59-60.

At this juncture John injects an admonition worthy of his courtly experience and political sagacity. If rulers depart a little from justice, do not immediately overthrow them. Rather, rebuke them with patience until it becomes obvious that they are stiff-necked in evil-doing and have no intention of mending their ways.[52] In a similar passage, later, he states that should a ruler be remiss in virtue to some degree, he is still to be cherished, for just as bees raise their king aloft so should subjects, as feet and members, obey their king, as long as his vices are not absolutely ruinous.[53] It is worthy of comment that our founding fathers, in drafting the Declaration of Independence some six hundred years later, echo a similar sentiment in stating that a few trivial abuses on the part of the ruling power would have to be tolerated by any citizenry. Rebellion could hardly be a daily occurrence, citizen Tom Paine to the contrary notwithstanding.

In searching for a ruler who manifested the highest norms of justice, John selects Job as a model. Both in his justice and charity this Old Testament figure exemplified the ideal ruler. This author states that in the merciful deeds of Job the nature of princely authority chiefly reveals itself, this authority which was established by God to banish wrongs. It belongs to public power to strive always to rule in such a manner that it will never suffer any in the community to become wretched.[54]

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[52] *Ibid.*, v, 6, pp. 84-85.

[53] *Ibid.*, vi, 24, p. 251.

Moving from the sphere of sacred rulers to that of the pagan, John says that many acclaim Julius Caesar as the most illustrious because of his diverse talents, but his preference is for Trajan. The choice rests on the fact that the latter founded the greatness of his reign on virtue. Trajan illustrated the meaning of Horace's words to the effect that he who has done rightly is to be regarded as king. Claudian, in a similar vein, commends Theodosius for listing virtue as a leader's chief attribute.[55]

In brief, the duty of the true prince is clear. He must circumvent those things which are unprofitable, and either destroy or convert them to fruitfulness. From his domain he must exclude whatever of injustice he there discovers. Let him fear for his downfall if, forgetful of charity and charmed by fleshly attractions, he diminishes the honor of God.[56]

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[54] *Ibid*., v, 6, pp. 88 and 91.

[55] *Ibid*., v, 8, pp. 104-07.

[56] *Ibid*., viii, 22, p. 395.

That John could perceive of sovereignty being limited by justice and law was hardly accidental. It was a reasoned philosophical conviction, as well as a time-honored tenet of the Church to which he was a loyal son. This was the institution so intimately bound up with the destiny of medieval man. John was to acknowledge its influence and assign it a prominent role in the political framework of the period.

The Role of the Church in the Political Structure

In the pages of the Policraticus some political philosophers profess to see the first claim that all authority, ecclesiastical and secular, belongs to the spiritual. Other political theorists disagree with this interpretation. For an understanding of the problem attention should be directed to John's analysis of the two-sword concept of authority, to which previous allusion has been made.

John explains that the prince receives his sword from the hand of the Church, though she herself has no sword of blood at all.[57] Here are his words:

> Nevertheless she has this sword, but she uses it by the hand of the prince, upon whom she confers the power of bodily coercion, retaining to herself authority over spiritual things in the person of the pontiffs. The prince is, then, as it were, the minister of the priestly power, and one who exercises that side of the sacred offices which seems unworthy

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[57] Ibid., iv, 3, p. 9.

of the hands of the priesthood.[58]

Moreover, the author continues, every office which exists under and is concerned with sacred laws is really a religious office, but that is considered inferior which is associated with punishment and seems typified in the person of the *hangman*.[59]

There can be little doubt that John regarded the spiritual sphere as superior to the temporal. He believes this superiority was dramatically demonstrated by the Emperor Constantine at the Council of Nicaea. At that convocation this sovereign showed the greatest of deference to the prelates, not deeming himself worthy to be seated with them and displaying extreme reverence for their decrees. He, in no sense, believed he possessed any right to exercise judgments against these men of God.[60]

To support his contention that the spiritual power is superior to the temporal, John advances two arguments. First, he quotes a passage from St. Paul (Heb. VII: 7) to the effect that he who blesses is greater than he who is blessed. Assuming that the Church has the authority to confer a dignity on the ruler, he concludes that the power bestowing the dignity, the Church, is superior to him on whom the dignity is conferred, the prince. His second argument follows a similar pattern. One who by law has the power to grant, has also the right to refuse; he who can lawfully bestow, can lawfully take away. The Church, in its relationship with the state, possesses both these positive and negative prerogatives. Samuel's deposing of Saul for disobedience is elicited as Scriptural warrant for spiritual pre-eminence in this respect.[61]

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[58] *Ibid*.: "Habet tamen et istum, sed eo utitur per principis manum, cui cohercendorum corporum contulit potestatem, spiritualium sibi in pontificibus auctoritate servata. Est ergo princeps sacerdotii quidem minister et qui sacrorum officiorum illam partem exercet quae sacerdotii manibus videtur indigna."

[59] *Ibid*. (Italics mine.)

[60] *Ibid*.

Further evidence of sacerdotal superiority is found in a section previously quoted in which our author advised illiterate rulers to request the assistance of the clergy in reading the laws. In that passage he says the mind of the prince should read through the medium of the priest's tongue and whatever of excellence the ruler sees in the lives of the clergy let him revere it as the law of the Lord.[62]

The superior role of the Church is further emphasized by means of a forceful analogy John excerpts from Plutarch's treatise, "The Instruction of Trajan." Plutarch states that the Commonwealth is a body endowed by life with divine favor, which acts at the prompting of the highest equity and is ruled by the power of reason. Those things which foster the practice of religion fill the place of the soul in this body. John proceeds to extend the analogy by submitting that those who preside over the practice of religion should be venerated as the soul of this body politic. Now, since it belongs to a soul to control a body, the prefects of religion, i.e., ministers of the Church, preside over the whole. Elaborating further on this analogy, John conceives of the prince as the head of this body, subject only to God and those who represent Him on earth. The heart is seen as the Senate. The eyes, ears, and tongue are judges and governors. Those attending upon the prince are like the sides of the body. The feet are the husbandmen and laborers. The latter need the intelligent guidance of the head, but in turn, perform a valuable function themselves. For if the feet do not discharge their assignment, the entire body is helplessly grounded.[63]

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[61] Ibid., p. 10.

[62] Ibid., iv, 6, p. 28.

In exhorting the faithful to reverence for the ministers of God, John again avails himself of an opportunity to stress the superior role of the Church. These ministers, he notes, are those called to procure the salvation of themselves and others by rooting out vice and implanting virtue. But we must remember that those who minister to God in human law are inferior to those who minister in divine law. The reason is obvious: the human is always beneath the divine.[64]

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[63] Ibid., v, 2, pp. 64-65.

Characteristic of his overall doctrine is his severe condemnation of sacrilege. In the person of those who administer His divine law, God regards their honor or dishonor as His own. The Code of Justinian prescribed the death penalty for those guilty of injuring priests or invading sacred premises by force. With these severe sanctions John is in complete accord.[65]

In the Policraticus are to be found sentiments of profound respect for the clergy, along with an open avowal of papal supremacy on its author's part. At the same time, certain passages represent some of the most severe excoriation of clerical abuse to be found in all of medieval political literature. Of particular relevance to an analysis of sovereignty is discerning the limitations John would place on ecclesiastical authority. In the course of censuring the clerical scandals of his day, his concept of the Church's role emerges.

In a section in which he deplores the conduct of judges and governors, he takes occasion to mention that examples of self-restraint are rare even among the clergy of his day. This, despite the fact that self-discipline is enjoined on all magistrates by law.[66]

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[64] Ibid., v, 4, p. 79.

[65] Ibid., v, 5, pp. 80-81.

[66] Ibid., v, 16, p. 148.

Bishops rightfully should command a venerable name for their office, but he wishes the incumbents would manifest a diligence and sincerity in discharging their duties that would correspond favorably with the ambition displayed in acquiring the position. Their exorbitant exactions decrease the reverence normally accorded such prelates.[67]

Nor do the legates of the Apostolic See keep their hands pure from gifts but rage through the provinces, as if they were Satan, scourging the Church. In the same breath John hastens to add that there are still many of the clergy who labor earnestly in the vineyard of the Lord.[68]

In voicing these criticisms, he insists he does not want to appear as a barking dog. Still less does he desire to set his mouth against heaven or become uncharitable against the fathers of the Church who judge the world and are judged by none on earth. Yet, none of the faithful will deny the truth of his allegations.[69]

John next recounts the details of an interesting personal visit at Beneventum with Pope Adrian IV, a fellow Englishman and respected confidant. Our author quite frankly informed the Pope that the Roman Church was supposed to be the mother Church but often behaved more like a stepmother. Adrian, far from being offended, was impressed by John's candor and urged him to express freely his opinion of the Church and her ministers. Endeavoring to avoid flattery as well as impertinence, John begins by admitting that some of the finest clerics of his acquaintance belong to the Roman Church. While acknowledging that what the Pope enjoins one must do, John does not subscribe to the belief that all Churchmen are to be imitated.[70] His acknowledgment of papal supremacy takes this expression:

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[67] _Ibid_., p. 152.

[68] _Ibid_., pp. 152-53.

[69] _Ibid_., pp. 154-55.

> For whosoever dissents from the teaching of you of the Roman Church is either a heretic or schismatic. But thanks to the favor of God, there are some who do not imitate the works of all of you.[71]

When John upbraids the Pope for extorting gifts and payments from his children, the latter smiles benignly and compliments John for his frankness. By way of explanation, Adrian relates a fable. Once, it seems, all the members of the body conspired against the stomach. The eyes, ears, hands, feet, etc. complained that while they toiled the indolent stomach made no contribution of its own. These members swore to abstain from any contribution to this idle enemy. Several days passed. By that time none of these several members was in condition to function itself. At a hurried council they came to realize unless the stomach were fed they would perish. Their boycott was quickly ended. Apply this analogy to the body of the commonwealth, notes Adrian. Magistrates do not gather for themselves, but for the benefit of others. In truth the stomach in the body and the prince in the commonwealth perform the same functions. If either is starved, there is nothing to be distributed to the other members. Adrian concludes by advising his friend not to measure so much the oppressiveness of princes but attend to the common utility of all.[72]

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[70] *Ibid.*, vi, 24, pp. 253-54.

[71] *Ibid.*, pp. 254-55: "Nam qui a doctrina vestra dissentit aut hereticus aut scismaticus est. Sed, Deo propitio, sunt qui non omnium vestrum opera imitentur."

Before turning again to a denunciation of clerical shortcomings and insistance on papal supremacy, John injects a notion bound up with the Gelasian doctrine mentioned before. There should be cooperation between the two spheres. It is to the advantage of the ruler that worthy men enter the priesthood. For, if the priesthood is blameless and the regal power administers its duties rightfully there will result a most beneficial harmony. This harmony will confer on the commonwealth what is both needed and profitable.[73]

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[72] Ibid., pp. 256-57.

[73] Ibid., vii, 20, p. 302.

For those leaders who would militantly attack the Church, John reserves a special malediction. It is far better that the diadem be torn from the head of a prince than that the good order of the chief and best part of the commonwealth, that concerned with religion, be destroyed at his pleasure.[74]

In the latter pages of the Policraticus where he once again turns to the condemnation of ecclesiastical scandal, John follows his previous pattern of mingling reproof with deference for papal supremacy. He hopes that the majority of priests will not express indignation if among the clergy he detects tyrants. Some of their number behave more like hirelings than shepherds. Once a bishopric is secured, certain prelates give themselves up to idleness and vanity.[75]

In listing abuses he states he will leave untouched the Roman Church, which by the highest authority of God is the parent and nursing mother of faith and life. Fortified by privilege from heaven, it can neither be judged nor blamed by men; it is incredible that its leaders should presume to commit unlawful acts.[76]

As we shall see later when he advocates tyrannicide, John's thinking remains consistent in respect to abused authority. The higher the position violated, the greater the condemnation reserved for the desecrator. After summing up a long list of clerical transgressions, he asks: "For if according to both human and divine law a temporal tyrant is to be destroyed, who can suppose that it is our duty to love and cherish a tyrant in the priesthood?"[77] Here John is not advocating physical violence be levelled against clerical tyrants - this he does for temporal tyrants - but is expressing his deep indignation at seeing the sacred profaned.

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[74] Ibid., p. 310.

[75] Ibid., viii, 17 ff. pp. 339-45.

[76] Ibid., p. 346.

Extending this theme he observes that while both an ecclesiastical and a secular tyrant are hurtful to the commonwealth, the former is really more damaging. He is the salt which, having lost its savor, is worthless.[78]

Consistent with the foregoing is John's deep abhorrence for schismatic and heretical strife. This type of conflict is more hurtful and hateful than civil strife. In such disputes acknowledgment of papal supremacy is the answer. When heretics and schismatics assail the Catholic position, then it becomes a pious act to defend truth and obey the Roman Pontiff with the utmost of devotion. For who would be so bold, he asks, as to pass judgment on the Supreme Pontiff, whose case is reserved for God alone.[79]

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[77] Ibid., p. 349: "Si enim tirannus secularis jure divino et humano perimitur, quis tirannum in sacerdotio diligendum censeat aut colendum?"

[78] Ibid., viii, 23, pp. 399-400.

Yet, at the very moment he exalts the papal power, John characteristically applies limitation. In discussing the Pope's position he states that if in supreme power there is the least freedom from restraint, verily, he who is over the laws is subjected to no law but is all the more strictly obliged not to commit unlawful acts.[80] "And for this reason the Roman pontiff has the least lawful liberty by virtue of the very fact that he has the most."[81]

At the outset of this section on the role of the Church as expressed in the Policraticus, it was observed that scholars disagree on interpretation. Some see John of Salisbury as being one of the first political philosophers to proclaim that all authority, secular as well as spiritual, belongs to the Church.[82] In an interesting dissenting opinion Professor John Dickinson admits John does hold the prince is subject to priests and is the minister of priests but nowhere states that the prince must submit to the adjudication of the priesthood all questions requiring an interpretation of divine law. The responsibility for bringing human law into accord with equity rests on the prince himself.[83]

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[79] Ibid., pp. 402-05.

[80] Ibid., pp. 408-09.

[81] Ibid.: "Ergo et Romano pontifici minimum eo ipso quo plurimum licet."

[82] Otto Gierke, Political Theories of the Middle Age, trans. Frederic W. Maitland (Cambridge: Cambridge University Press, 1922), pp. 105-06, n. 10; cf. also R. W. and A. J. Carlyle, A History of Mediaeval Political Theory in the West, Vol. IV: The Theories of the Relation of the Empire and the Papacy from the Tenth Century to the Twelfth (Edinburgh and London: William Blackwood and Sons, 1922), pp. 335-36. Jacob, op. cit., p. 79.

Following the views of Dr. Ernest Schubert, Dickinson maintains that while John's work seems to imply absorption of the state into the Church, closer examination reveals he evades the issue of just how the prince is chosen by the priesthood, the right of the Church to depose a ruler, and the manner in which the Church communicates its commands to a ruler and imposes them on him.[84] Thus, John did not believe in a complete subjection and absorption of the state in practice, "but rather regards the prince and the state as servants of the Church and of the priesthood only in an ideal sense, that is to say, only when the priests are really such as they ought to be."[85] Dickinson states he had arrived at this same conclusion even before he had the opportunity of reading

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[83] John of Salisbury, Policraticus, trans. John Dickinson, op. cit., "Introduction", p. lxiv.

[84] Ibid., quoting Ernest Schubert, "Die Staatslehre Johanns von Salisbury." Inaug. Diss. (Erlangen, Berlin, 1879) p. 36, n. 212.

[85] Ibid.

Schubert's treatise.

Dickinson further feels there is no assertion by John that the ruler must remit all doubtful points to the decision of priests or that they constitute an organ vested with the function of deciding such questions as a formal tribunal of last appeal. One might infer this from John's premises, but John does not draw this conclusion. John conceived of the Church as having a *moral* supremacy, rather than a *legal* one. This is a distinction John would not have understood, but as ideas became more sharply defined, views such as his tended to shape themselves into the papal claim for sovereignty over the entire world. This latter view, however, is not the opinion of John.[86]

Dickinson believes we must guard against reading into the *Policraticus* the claim that temporal government is subject to the political and legal supremacy of the priesthood. John had no such constitutional and moral principles. His doctrine may have pointed toward constitutional supremacy but did not embody it.[87]

In a section previously quoted (note 81), John insists that the Pope, though seeming to enjoy the utmost of liberty, is all the more obliged to refrain from unlawful acts. Here the author is asserting that the Pontiff is under the higher law just as any other magistrate would be.[88] In Dickinson's words: "John conceives of the Pope no more than the prince as 'sovereign' in the modern sense."[89]

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[86] *Ibid*., "Introduction", p. lxv. (Italics mine.)

[87] *Ibid*., n. 214, pp. lxv-lxvi.

To Dickinson it seems evident that John held for papal supremacy within the scope previously indicated. In addition, John contends that the Church, like the state, is but the instrument for applying the "higher law" which marked out the duties of both organizations.[90] These conclusions seem to merit serious consideration.

It remains to investigate John's advocacy of tyrannicide and its role in the area of sovereignty.

The Practical Limitation of Sovereignty by Tyrannicide

For his espousal of tyrannicide John is probably best remembered in the history of political philosophy. To Dr. Sabine it is a revolting theory.[91] A common error is to conceive of it as his essential doctrine.[92] Yet, John's exposition and justification of this tenet in the context of his political system will add immeasurably to understanding of the medieval notion of sovereignty. If his views on the lofty position of the ruler, justice, law and religion are ignored, his defense of tyrannicide becomes meaningless - nay, even barbarous.

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[88] *Ibid*., p. lxi.

[89] *Ibid*.

[90] *Ibid*., pp. lxiii-lxiv.

[91] *Op*. *cit*., p. 241.

[92] Jacob, *op*. *cit*., p. 82.

In the early chapters of the *Policraticus* John asserts decisively: "To kill a tyrant is not merely lawful but right and just. For whosoever takes up the sword deserves to perish by the sword."[93] The *law* rightly takes arms against one who disarms the *laws*. While many actions amount to *lèse majesté*, none is graver than one against Justice herself. Tyranny is more than a public crime, if that be possible. And if in an instance of *lèse majesté* all men are permitted to be prosecutors, how much more so in the case of a crime involving the perversion of *laws* which should bind even emperors.[94] "Truly no one will avenge a public enemy, but rather whoever does not seek to bring him to punishment commits an offence against himself and the whole body of the earthly commonwealth."[95] Few statements could be more explicit than the preceding passage in regard to the moral permissibility of tyrannicide. The inviolability of law justly warrants tyrannicide.

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[93] *Op. cit.*, iii, 15, p. lxxiii of "Introduction" of Dickinson's translation: "Porro tirannum occidere non modo licitum est sed aequum et justum. Qui enim gladium accipit, gladio licet occidere."

[94] *Ibid.*, pp. lxxiii-lxxiv. (Italics mine.)

[95] *Ibid.*: "Certe hostem publicum nemo ulciscitur, et quisquis eum non persequitur, in seipsum et in totum rei publicae mundanae corpus delinquit."

Since he viewed the commonwealth as a cooperative assembly, John is keenly mindful of the harm done the body politic by the rule of a tyrant. He quotes Plato as stating that when the magistrate oppresses the people it is similar to having a swollen head which the body is incapable of supporting. It is as if a guardian were to persecute his ward or a guard were to cut the throat of another with the very sword given the former for use in protecting the latter. However, the commonwealth can enjoy this status of a ward only so long as the head recognizes he is unprofitable unless he adheres to the other members. Classic examples of prominent leaders displaying this sense of integrity are cited in detail; among them are Alexander the Great, Scipio Africanus and Hannibal.[96]

John's treatment of the origin and development of tyranny is both interesting and provocative. At the root of man's craving for power are pride and ambition. Men will lavish great wealth in an effort to secure certain positions. Once these positions are attained, tyranny follows; equity is spurned. Although the opportunity is given to few to seize royal power, men untainted by by some form of tyranny are rare. Normally a tyrant is one who oppresses an entire populace by the rule of force, but all tyranny is not necessarily of this type. Men can be tyrants in some of the meanest stations in life; in fact, in any area where power can be extended.[97]

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[96] Ibid., v, 7, pp. 95 ff.

Delving further into the origin of tyranny, John's thought follows the Augustinian cast alluded to earlier. If iniquity and injustice had not banished charity and thus given birth to tyranny, all kingdoms would have been friendly and peaceful. Or, what is more probable, there would have been no kingdoms at all since it is clear from ancient history that these were founded on iniquity, as encroachments against the Lord or extorted from Him.[98]

Respect for right and justice either is not sufficiently present or is wholly wanting from tyrants. This holds true for both ecclesiastical as well as temporal tyrants. People should learn from the example of our first parents that the divine judgment regarding justice has still not expired. In effect it reads: because they would not obey justice when they could, it was imposed on them that they should not be able to obey justice when willingly they would.[99]

Still in the Augustinian vein, John does not deny that tyrants may well be the ministers of God, who wills that they exercise authority over souls and bodies to the end that the wicked may be punished and the good chastened and exercised. From the Book of Kings he finds evidence that tyrants arose as a result of the shortcomings of priests. The earliest patriarchs had followed nature, the best guide of life. They were succeeded by Moses who followed the Law and judged accordingly. However, corruption occurred among the priestly leaders, and the Lord, in His wrath, sent them kings, some just, many evil. This change occurred when Samuel, in his old age, was cursed with avaricious sons. Thus, the people who deserved to have priests rule them forced God to give them kings. Saul was chosen. He became a tyrant, yet, as John points out, this ruler was due reverence as a minister of God and, in a way, as one bearing the likeness of God.[100]

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[97] _Ibid._, vii, 17, p. 282.

[98] _Ibid._, viii, 17, p. 336.

[99] _Ibid._, p. 338.

This attempt to siphon some good from tyranny appears inconsistent with John's obvious detestation for this perverted form of government. However, he supports his stand in this manner. All power is good since it emanates from God from whom only good can flow. At times this power may not be good, but evil, to the one exercising it or to him on whom it is exerted. Yet, such an exercise of power is a good from the universal standpoint, being the act of Him who uses our ills for His own good purposes.[101] Thus, we have John saying, "Therefore even the rule of a tyrant, too, is good, although nothing is worse than tyranny."[102] True, tyranny is an abuse of power entrusted by God to man, but this evil can embrace a variety of uses, some of which may be good.[103]

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[100] *Ibid.*, viii, 18, pp. 350-51.

In treating of power he notes that if it is administered by wise men it can be a source of pleasure and an advantage to all; if power falls into the hands of the foolish, while it cannot really be an evil to the good, for whom all things work together for good, it can temporarily be a grievous affliction for them. In this context he explains that by "foolish" he means "evil".[104]

In summing up this point it may be safely assumed that in John's mind there is little doubt that tyranny arose from sin. Tyrants were deserved by the stiff-necked Jews who resisted Moses, the servant of law, and God, the Lord of law. Tyrants were demanded, introduced and raised to power by sin; they are blotted out by a people's repentance.[105]

In advocating tyrannicide John would impose certain limitations. True to the feudal concept, he maintains that no one should undertake the death of a tyrant if he is bound to the latter by an oath or an obligation of fealty. For, he explains, sureties for good behavior are justly given even to a tyrant. Turning to means, he believes that the use of poison is forbidden by all law, not that certain tyrants should not be removed, but the deed must be done without loss of religion and honor.[106]

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[101] Ibid., p. 351.

[102] Ibid.: "Ergo et tiranni potestas bona quidem est, tirannide tamen nichil est peius."

[103] Ibid., pp. 351-52.

[104] Ibid., p. 352.

[105] Ibid., viii, 20, p. 368.

In the latter pages of the Policraticus John turns once more to a justification for his theory of tyrannicide. Previously mentioned was his frequent comparison of the true prince to the likeness of God. Expanding on that analogy, he now argues that just as the likeness of God, the prince, is to be loved and cherished so "the tyrant, the likeness of wickedness, is generally to be even killed."[107]

From ancient history he selects classical examples of tyrannicide. Among the outstanding Roman tyrants he lists Caligula and Nero as the worst.[108] After recalling the diabolical deeds of these and other Roman despots, as well as their subsequent punishment, he concludes that it will be readily apparent that it has always been permissible to flatter and deceive tyrants. Indeed, it has always been an honorable thing to slay them if they cannot be curbed in any other fashion. He makes it clear that he is not now speaking of tyrants who operate in private life, but of those who oppress the commonwealth. Private tyrants can easily be restrained by laws, not so the latter. In this same passage he states that it is not lawful to employ the material sword against clerical tyrants because of the reverence due sacred things, unless, perchance, the offender has been unfrocked and lifts a bloody hand against the Church.[109]

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[106] Ibid., p. 373. Cf. also vi, 25, pp. 261-62.

[107] Ibid., viii, 17, p. 336: "...tirannus, pravitatis imago, plerumque etiam occidendus."

[108] Ibid., viii, 18, pp. 352 ff.

John holds Julius Caesar in high esteem for his many virtues, but observes that he, too, met the end reserved for those who seize power in the commonwealth.[110] The Emperor Comodus, prior to being slain, was adjudged an enemy of the human race. And this description, John believes, is the one that best describes a tyrant. He then concludes: "Therefore, as it is lawful to kill a condemned enemy, so it is to kill a tyrant."[111]

From biblical sources John extracts the celebrated instance of Judith beheading Holofernes to prove that it is just for public tyrants to be killed and a people to be set free for God's service. This account, he says, shows that the priests of God repute the killing of tyrants as a pious act. Though such a deed seems to bear the semblance of treachery, it is consecrated to the Lord as a holy mystery.[112]

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[109] Ibid., pp. 356-57. (Italics mine.)

[110] Ibid., viii, 19, pp. 358-59.

[111] Ibid., p. 364: "Sicut ergo damnatum hostem licet occidere, sic tirannum."

It is John's sincere conviction that God always punishes the tyrant. In so doing He may employ His own hand or a human hand as a weapon. Pharao's punishment by the ten plagues as described in Exodus is an example of the former; the death of Julian, the latter. The circumstances of Julian's demise are disputed, some alleging he was slain by an invisible hand, others by enraged men. But, John states, whether the deed was performed by man or angel, it is clear the agent was a minister of a divine command.[113]

Throughout his work John takes pains to avoid any anarchic excesses to which his advocacy of tyrannicide might tend. We have mentioned his deep abhorrence for treason and his insistence that one bound by fealty should not kill his tyrannous overlord. He advises forbearance in the instance of contemplated tyrannicide. David practiced this virtue on several occasions when he was presented the opportunity of slaying the unguarded tyrant,

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[112] Ibid., viii, 20, p. 372.

[113] Ibid., 21, p. 391. Cf. also v, 6, p. 93.

Saul. The most useful and safest way to destroy tyrants is to take refuge humbly in God's mercy and lifting up undefiled hands to Him, pray that the scourge may be turned aside. For the sins of transgressors are the strength of tyrants.[114] This view, already promulgated by St. Augustine, will later be presented also as an alternative by St. Thomas Aquinas.

In evaluating John's approval of tyrannicide, objection has been made that he draws no distinction between a person acting in behalf of the public collectively and one acting on his own initiative to rid the community of a tyrant. Later we shall see that St. Thomas Aquinas treats this same subject in greater detail and with more extensive qualifications.[115]

As Dr. Dickinson points out, it is difficult to determine whether or not John regarded the self-appointed slayer of the tyrant as representing the community. Perhaps John did, but he seems to permit one to execute such a deed without waiting for a community mandate. In most cases he seems to regard the slayer as representing God, rather than the community.[116]

In Dickinson's opinion John is handicapped by a shortcoming of his day, a lack of political machinery by which the community, or universitas, could oppose an unjust prince. To this problem of the Middle Ages allusion has been made earlier. Therefore, any action against the magistrate would have to be of a private nature.[117] Furthermore, according to this same authority, individual action was the only conceivable check on despotism in view of the concept of a higher law. This higher law, embracing the divine and the natural, was no more the prerogative of kings and organized communities than of the individual. Thus, there was nothing inherently objectionable in a private individual enforcing the law on his own initiative. He could know its precepts as well as officials.[118]

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[114] Ibid., 20, p. 373.

[115] Ibid., Dickinson's "Introduction", pp. lxxiv-lxxv.

[116] Ibid., p. lxxv, n. 256.

In the opinion of Carlyle, John's view on tyrannicide flows from the principle that one may rightly resist unjust and illegal authority.[119] Although his view may seem somewhat harsh "and might not have met with general approbation, yet the essential principle which he maintains is the normal view of the Middle Ages."[120]

In evaluating John's contribution to the medieval notion of sovereignty, it must be emphasized that he nowhere presents a systematic formula for deriving authority within the commonwealth. Two passages from the *Policraticus* may assist one in determining what this author deemed the source of political power. In commenting on Melchisedec, who was both king and priest, he observes that the two roles are not born of flesh and blood. They are divine, and in selecting candidates for such positions only the wholesome wishes of faithful subjects should prevail.[121] The second selection has been referred to earlier in treating the subject of the ruler's dignity. After stating that the ruler occupies his pre-eminent position by divine governance, John speaks of the prince being chosen by God's providence, the decision of the priests or by the *vote of the whole people concurring to give authority*.[122]

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[117] Ibid., p. lxxvi.

[118] Ibid., p. lxxvii.

[119] Op. cit., III, pp. 145-46.

[120] Ibid., p. 146.

These two passages do not conclusively show John posited sovereignty exclusively in the populace, but would imply great reliance upon the subject's preference for and acceptance of a ruler. Monarchy was the form of government with which he was best acquainted. There is no evidence that he sought to change it for another form. Yet, while admiring its dignity he saw the need for limitation and unhesitatingly prescribed what he deemed were needed remedies.

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[121] *Op. cit.*, iv, 3, p. 11.

[122] *Ibid.*, v, 6, p. 83. (Italics mine.)

John's stature in the field of political philosophy may be gauged by the contribution he made to the political principles of his era. Carlyle speaks of three great conceptions that dominated the middle ages at this time. Each may be seen as a limitation on unwarranted sovereignty. The first is the principle that the end of political organization is ethical or moral, that is, the maintenance of justice and righteousness. In arguing that the king's authority was of divine origin some confusion had occurred, especially in the instance of St. Gregory the Great maintaining that it was unlawful to disobey a king even when his conduct was unjust and illegal.[123] However, as Carlyle remarks, "The robust good sense of the mediaeval political thinkers and the force of circumstances counteracted this influence.[124] The second principle proclaimed the supremacy of law as the concrete expression of justice. Closely connected to the other two was a third, which held that the relation between the ruler and his subjects was established and depended upon a mutual obligation to maintain justice and law. Failure on the part of either party in this respect nullified the agreement.[125] The emphasis given these principles in the *Poli-*

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[123] *Op*. *cit*., III, pp. 181-83.

[124] *Ibid*.

[125] *Ibid*., pp. 183-85.

craticus indicates how genuinely John of Salisbury advanced the political theory of his day.

The next chapter of this work analyzes the theory of sovereignty from the viewpoint of St. Thomas Aquinas. Writing in an age of great political ferment within both state and ecclesiastical spheres, his deft treatment of principles related to sovereignty merits serious attention.

CHAPTER III

THE MODERATE VIEW TOWARDS CHURCH AND STATE SOVEREIGNTY

Advancing Claims for Papal Sovereignty

The thirteenth century, which embraced the life span of St. Thomas Aquinas, witnessed the height of power attained by the medieval papacy. To no small degree the pre-eminence of the Church during this period, in both the secular and spiritual sphere, is attributable to the writings and administration of Pope Innocent III, an eminent theologian and jurist.[1] Prominent also in this respect was one of his successors, Pope Innocent IV, who commented upon and expanded the claims of the former.

Their theories on ecclesiastical jurisdiction are of particular significance to any investigation of the medieval notion of sovereignty. In the wake of their pronouncements followed a period of violent controversy, their opponents contending that the decretals of these two Pontiffs represented an unwarranted encroachment of the eccelesiastical into the realm of secular authority. It will be the purpose of this section to examine some of their basic writings to determine how they arrived at their far-reaching claims for eccelesiastical power. The contributions of these Popes should serve by contrast to emphasize the more moderate view that characterizes the theory of St. Thomas regarding the Church's power within the state.

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[1] Sidney Z. Ehler and John B. Morrall, Church and State Through the Centuries (Westminister, Md.: The Newman Press, 1954), pp. 64-65.

Innocent III occupied the papal throne from 1198 to 1216. Early in his pontificate, on November 3, 1198, he issued a letter which exemplified his view of the ecclesiastical sphere being superior to the temporal. It was addressed to the chief of a league of Central Italian Cities who had appealed to the Pope for aid in opposing the occupation of their territory by German troops.

In the course of assuring the leader of papal assistance, Innocent III introduced a celebrated analogy regarding religious and temporal power. God has instituted two luminaries in Heaven, one to dominate the day, the other the night. In like manner He has established two great dignities, a major one to preside over the day of souls, a minor one to preside over the night of bodies. These are, respectively, the pontifical authority and royal power. Now just as the moon receives its light from the sun and thus is minor in quantity and quality, so royal power derives from pontifical authority the splendour of its dignity.[2]

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[2] Letter "Sicut universitatis conditor," found in Ehler and Morrall, ibid., p. 73.

This allegory of the sun and the moon was destined to enjoy frequent usage in ~~the~~ rapidly expanding controversy over state and Church domains. In itself the letter posits no new doctrine; the superior dignity of spiritual power was generally conceded by the secular power. What wider implications might arise from this forceful analogy remained to be seen.

In the course of his pontificate Innocent III saw fit to intervene in the settlement of a disputed Imperial election between King Philip and King Otto. The Pope, after some hesitation, confirmed the election of Otto and annuled the election of Philip. In his bull, Venerabilem fratrem, written in March of 1202 to one of Philip's supporters, Innocent III undertakes to defend his action and explain his concept of papal jurisdiction. The Pope begins by noting that his legate in the recent papal intervention was criticized for acting as either an elector or a judge. If he were intended as an elector, he was an interferer and, as such, an insult to the dignity of the princely electors; if a judge, he proceeded wrongly, since one of the parties to the suit was absent.

Innocent III hastens to assure his correspondent that just as the Pope does not desire his justice to be usurped by others, he does not wish to assume the prerogatives of the princes. He acknowledges the right of princes, by right and ancient custom, to elect kings who will be promoted later to the Imperial throne.[3]

But, on the other hand, he points out,

> the princes should recognize, and they actually do recognize, that the right and authority to examine the person elected as king - who is to be promoted to the office of Emperor - belongs to us, who annoint, consecrate and crown him.[4]

The Pope continues with an argument designed to explain why this examination is necessary. Certainly, the Church cannot be expected to annoint, consecrate and crown an elected king who might be sacrilegious, excommunicated, a tyrant, an idiot, a heretic, or a pagan!

Further, Innocent III argues, on the basis of law and precedent, when the votes of princes are divided, the Pope can after due warning and waiting, favor one of the candidates. For when the princes cannot, or will not, agree after being properly warned and allowed a sufficient amount of time, the Church would suffer by having no advocate or defender.

The supporter of Philip is admonished to abandon his oath to the latter. Since Philip has been rejected, he cannot hope to attain the Imperial dignity. Oaths in such cases need not be observed. Allegiance should be transferred to Otto, whom the Pope intends to call to the Emperor's throne.[5]

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[3] Ibid., pp. 71-72.

[4] Ibid., p. 72: "... principes recognoscere debent, et utique recognoscunt, quod jus et auctoritas examinandi personam electam in regem et promovendam ad imperium ad nos spectat, qui eum inungimus, consecramus, et coronamus." Note: Latin version from Corpus Juris Canonici (Decret. Gregori IX, lib. I, tit. VI, cap. XXXIV, ed. A Friedberg; Leipsig: Bernhardus Tauchnitz, 1881), II, p. 79. (Italics mine.) Subsequent Latin references to the decretals of Innocent III are from the same edition herein cited.

The Pope in this bull is claiming the right to pass on the worthiness of a candidate for a position of secular authority. What disturbed the electors in this instance was not so much the specific demands as the implication involved in final papal approbation or rejection of temporal officeholders. Was this an example of the spiritual invading the material realm?

Carlyle believes that Innocent's claim, de facto, amounted to an enormous invasion of the electors' rights, but admits that, in fairness to the Pope, there is no claim here to abstract political supremacy.[6]

In still another of his historic bulls, Innocent III further enlarges his conception of papal authority. This was Per venerabilem, issued on September 7, 1202. It was a response to a French nobleman, Count William of Montpellier, a powerful feudal lord who had requested of the Pope that his two sons, born of an illicit second marriage, be legitimated by the Church.

Innocent III, later in the bull, explains that he cannot honor William's request because of circumstances peculiar to this case. However, he contends that the Church does have the power to discharge this function, in fact, had actually granted the favor to Philip II of France, whose case involved slightly different factors.[7] On the basis of Old and New Testament warrant the Pope takes the position of holding that not only in the papal states

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[5] Ehler and Morrall, op. cit., p. 72.

[6] Op. cit., II, pp. 218-19.

> where we have full power in temporal matters - but also in other countries that we can occasionally exercise the temporal jurisdiction in certain cases, after having previously examined them.[8]

Innocent, as in previous instances, vigorously maintains that he does not wish to prejudice anybody's rights or usurp any power that does not belong to him. To that end he quotes the scriptural admonition that the things of Caesar should be rendered to Caesar. However, he follows the foregoing with a quotation from Deuteronomy where one is advised that if judges cannot agree, a person should consult the priests of the tribe of Levi and follow their decision. In the New Testament dispensation Christ has established the Apostolic See, through St. Peter, to discharge the same duties as the sons of Levi. Innocent now quotes the passage in which Christ conveys to Peter the power of binding and loosing. From this it follows that the Vicar of Christ is the superior judge over those priests who now represent the Levitical tribe.

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[7] Ehler and Morral, op. cit., pp. 67 and 69.

[8] Ibid., p. 67: "...super quo plenam in temporalibus gerimus potestatem verum etiam in aliis regionibus, certis causis inspectis, temporalem jurisdictionem casualiter exercemus." C. J. C., op. cit. (Decret. Gregori IX, lib. IV, tit. XVII, cap. XIII), II, p. 715. (Italics mine.)

Just what type of judgment will fall within the jurisdiction of the Holy See? Innocent III distinguishes the realm of judgment according to the type of justice involved. The first type of justice is concerned with the distinction between criminal and civil law; the second, between ecclesiastical and criminal law. There is a third type which falls into the realm of both ecclesiastical and civil law. In this last instance, should any difficulty or ambiguity result, the Pope states that recourse must be made to the Apostolic See. If one, in his pride, disregards the papal sentence, then he shall be separated, as if dead, by a degree of excommunication. To buttress his argument Innocent III quotes from St. Paul's reminder to the Corinthians that they would be judges of angels. If so, how much greater would their power be in judging purely mundane matters.[9]

As Carlyle points out, the claims of this decretal are far-reaching and in the course of the thirteenth century became the starting points for the papal extremists who were to maintain later that the Pope possessed in the last resort all temporal and spiritual authority. However, as this critic cautions, it seems highly doubtful that Innocent III contemplated this extreme interpretation of his claims, in view of the distinct caution with which he expresses himself. It is true that the Pope maintains that in a dispute over spiritual and secular jurisdiction the spiritual is to decide. Such an incidental statement in the *Decretals,* however, would not justify the assertion that it was an established principle of canon law that in instances of such conflict canon law must necessarily prevail.[10]

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[9] Ehler and Morrall, op. cit., pp. 67-68.

It would be helpful to refer to one more decretal of Innocent III to illustrate the extent to which he thought papal power might be exercised in the settlement of temporal dissention. This was the bull, *Novit ille*, addressed to the French episcopate in 1204. It was occasioned by an appeal to the papacy on the part of King John of England. John had contended that his feudal rights were being violated by Philip II, king of France. Hostilities had been extensive. It was to the Pope's advantage to effect a peaceful settlement between these rulers for the war was disrupting the Fourth Crusade and affecting the papal policy in Germany.[11]

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[10] *Op. cit.*, II, p. 233.

[11] Ehler and Morrall, *op. cit.*, p. 65.

In this bull, following the pattern employed in his other writings, Innocent III asserts that he has no desire to disturb or lessen the power of the French king any more than Philip would want to impede the power of the papacy. Why should we want to usurp the power of someone else, asks the Pope, when we are hardly able to discharge sufficiently our own jurisdiction.

King John of England, in coming to us for redress, is merely following a biblical admonition. Our Lord has stated that if someone offends you, rebuke him. If the offender will not listen to you, confront him in the presence of several witnesses. If he is still adamant, go to the Church. All this King John has done.

The Pope states he does not intend to render justice in feudal matters. Such jurisdiction belongs to the king, unless surrendered by special privilege or contrary custom.[12] But, states the Pontiff, we want "to decide in the _matter of sins_, of which the censure undoubtedly pertains to _us_ and we can and must exercise it against any one."[13]

In this respect, says Innocent III, we do not lean on human constitutions, but more on divine law, because our power derives not from man but from God. Anyone of sound mind is aware that it belongs to our office to draw any Christian from mortal sin, and should he despise our correction to coerce him with ecclesiastical censures.

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[12] _Ibid_., pp. 69-70.

[13] _Ibid_., p. 70: "...decernere de peccato, cuius ad nos pertinet sine dubitatione censura, quam in quemlibet exercere possumus et debemus." _C. J. C._, _op. cit_. (Decret. Gregori IX, lib. II, tit. I, cap. XVIII), II, p. 243. (Italics mine.)

There can be no doubt that we possess the power to coerce. Did not our Lord inform the prophet who was one of the priests of Anathot that he had been set over nations to root up, lay waste, destroy and build? The power to bind and loose conferred by Christ on Peter is additional proof. Some may contend that kings are to be treated differently, but Divine law says there is to be no difference in persons. St. James expresses the same idea in urging that no distinction is to be made between the rich and poor. Thus, the Pontiff continues, we have the power to proceed against any criminal sin and recall the sinner from vice to virtue, especially in the case of sins against peace, the bond of charity.[14]

The Pope explains that the original peace treaties, now broken, had been affirmed by duly sworn oaths. Certainly it belongs to the jurisdiction of the Church to examine these religious oaths in order to cause the broken peace treaties to be restored. He concludes by stating that his legate will investigate the validity of the charges alleged by the two royal disputants. Both parties are to accept the legate's decision as being that of the Pope; failure to comply will merit papal punishment for disobedience.[15]

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[14] Ehler and Morrall, op. cit., pp. 70-71.

Here again is a situation where the implication was far more significant than the claim itself. The Pontiff is appealing to two basic principles to substantiate his intervention. The first was of a religious nature: any matter touching on sin fell within the Church's jurisdiction. Accordingly, any transgression against peace, or a violation of an oath fell within this category. The second was a legal principle stemming from a genuine law of Constantine, though it seems to have been repealed by later emperors. This law permitted a party in a civil suit to transfer the case at any time to the court of a bishop. Whatever may be the grounds on which Innocent III bases his contentions, Carlyle insists that we still do not have here any pretension to general political supremacy.[16]

In an overall evaluation of the entire range of this Pontiff's claims, Carlyle has consistently held the same opinion as the one just expressed.

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[15] *Ibid.*, p. 71.

[16] *Op. cit.*, II, p. 222.

Dr. Sabine sees the claims of Innocent III in a different light. He grants the Pontiff did not assert that his power superseded the temporal or that the temporal received its power from him. Yet, the claim that the papacy possessed the general power of review could be extended to include almost any question. Sabine believes that such a *plenitudo potestatis* is hard to render by any other term than "sovereignty".[17]

For Professor McIlwain the jurisdictional claim by Innocent III is almost illimitable and in its exercise is without parallel. Yet, it was a jurisdiction in its nature primarily spiritual and only incidentally temporal. It was a power grounded in the Pope's duty as Vicar of Christ to judge upon the sins of all Christians. In direct utterances the Pope seems to have made no claim to *direct power* in temporal matters.[18]

The views of McIlwain and Carlyle certainly merit respect. At the same time it should be observed that the latter believes that in the *Decretal* letters of Innocent III one may find the ultimate *source* of the extreme views of papal authority in temporal matters that developed in the second half of the thirteenth century.[19]

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[17] *Op. cit.*, pp. 271-72. Cf. also Luigi Sturzo, *Church and State*, trans. Barbara B. Carter (New York: Longmans, Green and Company, 1939), pp. 97-98. This author denies that Innocent III is claiming only an "indirect power" for the Church in temporal matters.

[18] *Op. cit.*, p. 233. (Italics mine.)

In the writings of Pope Innovent IV, whose pontificate spanned the years from 1243 through 1254, there is observable the expansion of the claims inherent in the writings of Innocent III. In his "Commentaries on the Decretals," more than in the Decretals themselves, Innocent IV draws conclusions which his predecessor left implied. In his decrees Innocent IV is issuing judgments and dogmatic statements; in his commentaries he is rendering his opinion as a canonist.[20]

Several examples from his "Commentaries" should serve to illustrate the view of this Pontiff regarding the jurisdiction of the Church in temporal matters. In one instance he contends that he holds the right to appoint a "curator" in the case of a king's becoming incapacitated. In this situation he argues that it is proper for a superior to appoint such a "curator", but should there be no other superior the Pope should exercise this function.[21]

Innocent IV appears to be positing the idea that he is the final superior over secular authorities in temporal, as well as spiritual, concerns. This belief gains greater credence when the Pontiff actually refers to himself as "the ordinary judge" of all men.[22]

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[19] Carlyle, op. cit., V. p. 318. (Italics mine.) Cf. also the excellent account of Innocent III's writings and pontificate in this volume, pp. 151-234.

[20] Ibid., pp. 318-19.

[21] Pope Innocent IV, Divina Innocentii IIII in V libros decretalium commentaria, A. D. L. Pavlo Rosello adnotationibus (Venice: 1570), i, 10, C. II, in VI "Grandi", p. 118.

In a sweeping series of claims Innocent IV draws out the significance of his right to intervene in the case of a defect of justice and also stresses his authority when a vacancy occurs on the imperial throne. The emperor is the advocate of the Pope and holds the empire from the Pontiff. The Pope, then, may take the emperor's place during a vacancy. In the case of other kings who are negligent and have no superiors, the Pope may succeed to their jurisdiction, not because they hold their kingdom from him, but in virtue of the power he possesses as the Vicar of Christ.[23]

Innocent IV traces the authority of the papacy through St. Peter to Christ, the natural king and lord of all. Thus, though there be many forms of government men may always have recourse to the Pope when a need occurs. This could happen when there is a difficulty about law and the judge is uncertain about what judgment he should render. It could also happen when there is no superior, when the judges cannot secure the execution of their judgment or do not choose to render justice.[24]

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[22] *Ibid*., ii, 2, 17, "Dilecti filii," p. 241: Hic non consentit in alium judicem nisi suum, quia papa 'judex ordinarius' est omnium." Cf. also Carlyle, *op*. *cit*., V, p. 320. This author believes personally that in this passage Innocent IV is claiming final superiority in both realms but concedes his interpretation is open to dispute.

[23] *Ibid*., ii, 2, 9, "Licet ex suscepto," pp. 238-39: ..."quia Papa eum consecrat et examinat et est Imperator ejus advocatus, et jurat ei, et ab eo imperium tenet... Et inde est quia in jure quod ab ecclesia Romana tenet, succedit Papa, imperio vacante.... Sed hoc non facit quia ab eo teneat regnum, sed de plenitudine potestatis quam habet quia vicarius est Christi."

Further, it is the belief of this Pontiff that the Pope, as Vicar of Christ, holds power not only over Christians but over all infidels as well. He states that, from what he has pointed out before, it appears the Pope has jurisdiction over all and power by right, though not in fact. It is also his belief that if a pagan commits an act contrary to the law of nature he may be licitly punished by the Pope. Likewise, the Pope may issue judgments against Jews, if they act, in matters of morality, contrary to the law of the Gospel and are not punished by their own leaders.[25]

In summarizing the claims expressed in the passages cited, Carlyle states, "It does not seem too much to conclude that in Innocent IV's view all temporal as well as spiritual power in principle belonged to him."[26]

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[24] *Ibid*., p. 239.

[25] *Ibid*., iii, 34, 8, "Quod super", p. 514: "Bene tamen credimus quod Papa qui est vicarus Jesu Christi, potestatem habet, non tantum super Christianos, sed et super *omnes infideles*... Et sic per praedictam apparet quod Papa *super omnes habet jurisdictionem*, et potestatem de jure, licet non de facto. Unde per potestatem quam habet Papa, credo quod si *gentilis*, qui non habet legam nisi naturae, si contra legem naturae facit, *potest licite puniri per Papam*.... Item *Judeos potest judicare Papa*, si contra legem Evangelii faciunt in moralibus, si eorum prelati eos non puniunt...." (Italics mine.)

How the claim for papal supremacy was advanced further in the latter part of the thirteenth and early fourteenth century will be discussed later in chronological sequence. It is to the writings of St. Thomas Aquinas that attention is now directed for a treatment of the limitations of sovereignty, both civil and ecclesiastical. His characteristic thoroughness and moderation will be in evidence whenever he discusses this subject.

St. Thomas on the Concept of Sovereignty

The Natural Necessity of Government

Into the turbulent political world of thirteenth century Europe St. Thomas Aquinas was born, his life embracing the years from 1225 to 1274. The power and the majesty of the Church were at their zenith; in fact, as has been noted, the pontificate of one of the most influential of Popes, Innocent IV, fell midway within the life span of Thomas.

In his political writings Thomas draws heavily from the works of Aristotle. Most of the latter's works, lost to medieval Europe for centuries, were being introduced by way of Arabic commentaries and Latin translations of Arabic versions. In 1260 William of Moerbeke translated the Politics of Aristotle from the original Greek into Latin. This accomplishment was of profound significance to political philosophy.[27] Thomas was to use this version to excellent advantage.

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[26] *Op. cit.*, V, p. 324.

In his political theory Thomas attempted to couch the fundamental concepts of his age in Aristotelian terms. Men of his day subscribed to the Stoic, legal, and Patristic tradition which contended that coercive government was the result of sin, not derivative from man's true nature. Yet while holding that such government was the result of sin, they were careful in stressing that this was still a remedy sanctioned by God; hence, quite expedient and necessary. While Thomas does not in all respects directly contradict the foregoing view, he very clearly inserts, under the influence of Aristotle, a conception of the natural necessity of government.[28] Unless this fundamental belief is thoroughly grasped and appreciated, the checks he later imposes on sovereignty will be meaningless.

Just as a ship needs a pilot to achieve its end, so a man needs a directive principle to achieve his goal in life. Reason is man's guide in attaining this end;

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[27] Sabine, op. cit., pp. 244-45.

[28] Carlyle, op. cit., V, p. 4 and pp. 10-11.

if he lived in isolation, this would be enough. However, man is a social and a political animal by nature. Though endowed by nature with reason, he would not be able to provide all that he needs through his own efforts; it is natural that he live in society which can assist him. In like manner, no man is able to arrive at a knowledge of all things by his own reason; man must live in society in order to make an intellectual contribution of his own and, in turn, to receive the benefits of others' reasoning powers.[29]

In addition, observes Thomas, man is endowed with the gift of speech by which he is enabled to live socially. Since he is ordained for society, there is a natural need for some means by which the group may be directed or governed. There must exist something which impels towards the common good of all in addition to that which impels to the particular good of individuals. This direction of the multitude we call a governing power; it is most reasonable and natural.[30]

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[29] St. Thomas Aquinas. De regimine principum, Joseph Mathis curante (2nd ed. rev.; Rome: Marietti, 1948), i, 1. The foregoing will be cited for Latin sources. The English version being used, unless otherwise noted, is: On Kingship To The King of Cyprus, trans. Gerald B. Phelan (Toronto: The Pontifical Institute of Mediaeval Studies, 1949), pp. 3-5. This latter work covers only that portion now conceded to be the genuine work of St. Thomas: Bks. I and II, chs. 1-4. The rest was completed by Ptolemy of Lucca.

[30] Ibid., pp. 5-6.

In another section of his writings Thomas repeats substantially the same ideas and appends an additional reflection. Since there is a wide diversity in the talents of the masses, we observe that many exceed others in knowledge and virtue. There is a natural need that these superior talents be directed to the benefit of others.[31]

Man, then, must live naturally in society since he is not sufficient unto himself to procure the necessities of life. From this it follows that the government of a people is more perfect to the degree that it is able to provide these needs for its citizens and reach a high degree of self-sufficiency. Self-sufficiency thus becomes a requirement of the ideal or perfect form of government.[32] Again, Thomas is revealing his reliance on the Aristotelian notion of the state.

To govern is to lead the thing governed to its proper end. As we have noted, the pilot bears the responsibility of bringing a ship to port. In like manner, the doctor seeks to preserve man's health; the teacher takes pains to insure that man may learn the truth. These are not ultimate ends for man but serve analogically to illustrate the need for direction to an end: the basic function of government.[33]

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[31] Summa theologica, trans. by Fathers of the English Dominican Province (3 vols.; New York: Benzinger Brothers, Inc., 1947), I, q. 96, a. 4, corpus. The Latin source, when cited, is Summa theologica, in Opera omnia, jussu impensuque Leonis XIII edita, Vols. IV-X (15 vols.; Rome: ex typographia polyglotta, 1888-1899).

[32] De reg. prin., op. cit., i, 1, pp. 9-10.

In the strict Aristotelian tradition Thomas points out that the end of the multitude gathered together is to live virtuously. Men form a group for the purpose of living together *well*, an objective which the individual man, living by himself, could not attain. This good life is a virtuous life, thus the virtuous life is the end men are seeking when they assemble to live together. Only those who render mutual assistance to one another form a genuine part of the assembled community. Here Thomas repeats the observation of Aristotle that if men assembled merely to live, then animals and slaves would form a part of the civil community. Yet, we see the unity in society as stemming from the fact that a people are directed by the same laws and the same government to the end of living *well*.[34]

In the light of the foregoing there should be little difficulty in perceiving that Thomas, with the common sense characteristic of the medieval man, recognized that government was a natural institution.

Evaluation of Forms of Government: Polity and Monarchy

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[33] *Ibid.*, ii, 3, pp. 58-59; cf. also Charles N. R. McCoy, "St. Thomas Aquinas," *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey (Chicago: Rand McNally and Company, 1963), pp. 208-211.

[34] *Ibid.*, ii, 3, p. 60. (Italics mine.)

In his treatment of the various forms of government Thomas provides the best index of his approach to the problem of sovereignty.

He indicates his familiarity with the six forms of government illustrated in Aristotle's Politics. The unjust forms are tyranny, oligarchy and democracy; the just are monarchy, aristocracy and polity (or timocracy).[35] As with Aristotle, so with Thomas, democracy does not signify the meaning it would hold for one in the American or modern tradition. For them it smacked of unjust and ruthless exploitation of the propertied classes by the incompetent masses; as such, it was suspect. Thomas always stresses the idea of responsibility; his aim was to produce citizens, not just subjects. One should perform an active role in the community.[36] Closest to the modern idea of representative democratic government would be the just form Thomas calls polity.

Gilby says we find Thomas at times commending all three of the forms as abstractions, but the saint seems to favor none in straight form alone. He really approved of a polity in which all three are blended.[37]

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[35] Ibid., i, 1, pp. 7-10.

[36] Thomas Gilby, The Political Thought of Thomas Aquinas (Chicago: The University of Chicago Press, 1958), pp. 296-97.

[37] Ibid., p. 298.

In a particularly lucid passage treating of polity Thomas observes that two elements are essential to ideal government. First, in the right ordering of a nation all should possess some share because this form of constitution insures peace among people, commends itself to all, and lasts longer. The second element looks to the kind of government. Under this consideration the first place is held by a kingdom (monarchy) with power vested in one person; the second is known as an aristocracy, or a government by the best, but centered in a few. However, the best form of government is found in that state where one is given power to preside over all, while under him are others having governing powers. A government of this type is shared by *all*, because all are eligible to govern and the rules are chosen by all. This is the best form of polity for these reasons. It is partly a kingdom since there is one person at the head of all; it is partly an aristocracy inasmuch as a number of persons are set in authority. Lastly, it is partly a democracy, i.e., a *government by the people*, in that the rulers can be selected from the people and the people can exercise their right to choose their rulers.[38]

In the passage just cited Thomas certainly appears to be positing sovereignty in the people. Just how they were to exercise this function should become evident in the course of developing his conception of authority within the state. At first glance it would seem that his advocacy of monarchy in *De regimine principum* is at variance with the ideas embodied in the passage quoted above. But this apparent contradiction is readily dispelled when one encounters the numerous limitations he imposes on monarchy, the next subject to be discussed.

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[38] *Summa theologica*, *op. cit.*, I - II, q. 105, a. 1, corpus. (Italics mine.)

In the tradition of John of Salisbury his praise for the just king is unstinted. The basic idea of a king implies that he be one man who is chief and that he be a shepherd seeking the common good of the multitude and not his own aggrandizement. A man ruling a perfect community is called a king. A man ruling a household is called a father, not a king, but because of the resemblance, kings have sometimes been called the fathers of their peoples.[39]

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[39] *De reg. prin., op. cit.*, i, 1, pp. 9-10. Cf. also St. Thomas Aquinas, *On the Incarnation and Kingship of Christ*, trans. and ed. John K. Ryan ("Studies in Philosophy and the History of Philosophy," Vol. I; Washington: The Catholic University of America Press, 1961), pp. 206-08. In this homily Aquinas stresses four qualities required for kingship: (1) unity; (2) fulness of power; (3) wide jurisdiction and (4) equity. He explains that unity would be lacking if lesser rulers within the realm were allowed to override the monarch. If the king lacks fulness of power, then he is little more than a consul or magistrate. To be a king one's power must cover a wide domain; a father may have fullness of power within his home but is certainly not regarded as a king. Lastly, a monarch must possess equity or justice, else he becomes a tyrant converting all things to his own advantage; a true king, however, orders his kingdom for the *common good*. (Italics mine.)

In pointing out the merits of monarchy, Thomas begins by asserting that the chief concern of a ruler should be the unity of peace, which the former adequates with good laws well obeyed. One person can effect this better than many, for with the latter there is a greater likelihood of disagreement. Nature points the way for us in this respect; she employs one principle of governance, for example, in having the heart alone rule over the bodily members. Likewise, among the powers of the soul reason alone rules. Now if artificial things approach perfection to the degree that they imitate nature, it follows that it is best for the multitude to be ruled by one person. Also, continues Thomas, the experience of history testifies that there has been far more dissension and strife among cities and provinces that have not been ruled by one person.[40]

But Thomas is ever the political realist. In his opinion both the best and worst governments are latent in monarchy. In the rule of one man the royal dignity has been rendered hateful to many people because of the wickedness of tyrants. History abounds with numerous examples of this abomination, and the concept of monarchy has suffered accordingly. The overall effect has been that men haunted by the fear of tyranny have missed the opportunity of enjoying the very best government, which is kingship; or they desire kingship and find the kingly power deteriorates into tyranny.[41]

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[40] Ibid., i, 2, pp. 11-13.

For the just king Thomas reserves the rich rewards John of Salisbury has enumerated. Some will have it that the reward consists in honor and glory. But these expressions are extremely perishable since they depend upon the shifting foundation of men and their opinions. Moreover, observes Thomas, to please men a king would have to be subservient to their wills, thus making himself a slave to all. Consequently, the reward of human glory is not enough for a just king. As with all good men, the virtuous king should take no account of glory and temporal goods. If glory were a fitting reward, some rulers would be tempted to seek it unduly in war. Additionally, since it is difficult to acquire true virtues, to which alone honor and glory are due, some rulers would be tempted to hypocrisy by feigning virtue for worldly acclaim alone. Glory-seeking does have some merit, but only when it is sought as approval from good men; for one who disregards the judgment of good men will commit heinous crimes.[42]

To whom then must the just king look for his reward? To God, answers Thomas. This reward is an everlasting one, consisting in the possession of God, Himself.

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[41] *Ibid.*, i, 4, pp. 19-21.

[42] *Ibid.*, i, 8, pp. 34-38.

The reward for virtue is happiness, but since this cannot be fully realized in earthly goods, none of which is completely satisfying, the reward will have to be beyond the material sphere. Rulers, then, will be happy if they rule justly, if they rule their passions rather than nations, and if they do all these things, not for vainglory, but for the love of eternal happiness. In achieving this happiness they shall achieve God, who alone can still the desires of man and be a fitting reward for a king. In this sense it can be verified that the reward of a king is, indeed, honor and glory if we remember that no worldly honor can be likened to being made a citizen with the saints and a kinsman of God.[43]

In much the same pattern as John of Salisbury, Thomas contends that if happiness is the reward of virtue, then it follows that a greater happiness is due a greater manifestation of virtue. Now, the just ruler, since the embrace of his duties involves a greater exercise of virtue, is rightfully due a greater reward. Similarly, a king is due a higher reward for directing his subjects than they for obeying him since a leader is more virtuous than a mere follower. In fact, a king bears a likeness to God in that he effects in his kingdom what God does in the world.

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[43] Ibid., i, 8, pp. 34-38.

A just king is deserving of merit for still another reason. As is obvious, the exercise of authority presents a crucial temptation to men; many succumb to corruption when elevated to the pinnacle of power. Rulers who surmount this temptation are deserving of an even greater reward because of the greater difficulty of acting well in this preeminent position. Correspondingly, those kings who go amiss are rendered more excusable before men and are more easily forgiven by God if properly repentant. Just rulers are destined for an unusually lofty position in heaven. Even the pagans had some inkling of this concept when they undertook to deify their revered sovereigns.[44]

Deeply imbued with a feeling of profound respect for the dignity of the kingly office, Thomas proceeds to expand the analogy between the role of God and the ruler. In nature we find there is both a universal and a particular government. The former is exercised by God whose rule embraces all things; the latter is found in man and is similar to divine government. Now just as all things corporal and spiritual are embraced under divine government, in like manner the human body and soul are governed by reason. In a proportionate manner, reason is to man what God is to the world. Applying this analogy of divine government to man, who is a social animal, Thomas concludes that not only does each man govern himself by reason but it is fitting that the multitude of men should be governed by the reason of one man. Let a king once realize that he is to be to his kingdom what the soul is to the body and what God is in the world, he could scarcely perpetrate injustice. For in this sense he has been appointed to his position in place of God that he might exercise righteous judgment.[45]

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[44] *Ibid.*, i, 9, pp. 39-43.

Continuing his lofty analogy Thomas states that it belongs to the nature of God to perform two works with respect to the world: first, He created the world and, secondly, He devised a form of government for the things created. By parallel, the second activity is more properly that of an earthly king, for the word "rex" is derived from the idea of "directing." Only in instances when a ruler would be establishing a new city for his people, such as in ancient times, would the earthly monarch be exercising a function similar to God's creating.[46]

As noted earlier, government naturally has as its purpose the directing of human beings to a goal or end. It falls to the lot of the king to do this directing. We have noted earlier that man might have lesser ends such as health or the learning of truth, in which case, to govern would fall to a physician or a teacher. However, since men unite to live well or virtuously then the king must direct them, in some way, toward their goal. Thomas now points out that living virtuously is further ordained to an even higher or last end which consists in the enjoyment of God. If this end could be achieved by the power of human nature, then it would be the duty of a king to direct men to it. Since men attain this last end only through divine power, the task of leading men to it pertains to divine and not human government.[47] This phase of direction will be treated at length in the section of this work where Thomas propounds his view of the Church's role in the governance of man.

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[45] _Ibid_., ii, 1, pp. 53-54.

[46] _Ibid_., ii, 2, pp. 55-57.

The question naturally suggests itself: What role does the king play in the process of his subjects' gaining their last end? Thomas answers that the king's office should promote the good life in such a way as to make it suitable for his subjects to attain heavenly happiness. This, in effect, amounts to commanding things which lead to the happiness of Heaven and, as far as possible, forbidding the contrary.[48]

Specifically the king discharges this role in three ways. First, he should have concern for establishing virtue; secondly, for preserving it and, thirdly, for improving it. To establish virtuous living in the multitude he should see to it that the people are established in the unity of peace, that they are directed to acting well, and lastly that they are provided with a sufficient supply of those things required for a proper living. In the preserving of virtue the king should take these three measures: first, see to it that the positions in government are filled, when vacated, with capable replacements; secondly, that men of perverse will are punished and worthy office holders rewarded; thirdly, that the external enemies of the country be restrained by adequate military safeguards. On the score of improving virtue the king should take steps to correct what is contrary to order and supply what is lacking. If anything can be done better, he shoud undertake to try new methods.[49]

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[47] *Ibid.*, ii, 3, pp. 59-61.

[48] *Ibid.*, ii, 4, p. 64.

In any summary of the view of Thomas regarding monarchy as a form of government, it should be noted that he is expressing the characteristic view of the middle ages. It is the best form of government so long as it is not corrupted. Since the power of a king is so extensive, it may easily deteriorate into tyranny unless it is conferred on a virtuous man. And Thomas certainly realizes that it is only the virtuous man who conducts himself well in the midst of prosperity.[50]

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[49] Ibid., ii, 4, pp. 65-67.

[50] Sum. theolog., op. cit., I-II, q. 105, a.1, ad 2.

That he shares the typical medieval loathing for tyranny is quite apparent from the detailed treatment he accords it and the safeguards he recommends to forestall this corrupted form of monarchy.

Safeguards Against Tyranny

There can be little doubt that Thomas regards tyranny as the worst form of government. He justifies his view on the grounds that if monarchy be the best form of government, its corrupted form, tyranny is the worst. The inherent evil in tyranny consists in the fact that the tyrant opposes the multitude and diverts the common good to his own selfish interests. Compared with the other forms of unjust government, tyranny is the worst, and for these reasons. The evil in any unjust government is the departure from the common good. In an oligarchy, where the advantage of a few is sought, we have a greater repudiation of the common good than in a democracy, in which the advantage of the many is sought. In tyranny, however, the departure from the common good is the greatest since the selfish advantage of only one person is pursued.[51]

Tyranny has other defects. It breeds instability since every governmental activity depends on the caprice and will of one man; everything is uncertain when there is a deviation from the norms of justice. The virtue of good subjects is an object of suspect to the tyrant. Always suspicious of others, since he judges them by his own wicked standards, the tyrant lives in fear of any subjects becoming rich and powerful. As a means of preventing others from uniting to overthrow his tyranny, he continually sows discord and worries even when there is no reason for concern. In such an unstable political climate, virtuous men, living continually in fear, develop meanness of spirit and are discouraged from undertaking any noble or manly tasks. Lack of appreciation for their valor and talents adds to their disillusionment. History testifies that few noble men are found beneath a tyrant's sway. Well might men fear and despise the tyrant, for one governing without reason in no way differs from a raging beast.[52]

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[51] De reg. prin., op. cit., i, 3, pp. 13-15.

While Thomas views total oppression of the people by a monarch as the worst form of tyranny, he does not foresee this extreme as happening each time a monarch deviates from the common good. In fact, he believes that when an aristocracy becomes corrupt there is a chance of greater evil to the community than when an individual monarch becomes a tyrant. In the former instance, because of internal dissension among a group of rulers, more strife will be visited on the populace. Moreover, states Thomas, history will verify the fact that polyarchies have more frequently fallen into corruption than monarchies, hence the latter is a more expedient form of government under which to live.[53]

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[52] *Ibid.*, pp. 15-18.

In treating of the measures Thomas employs for restraining the excesses of the kingly tyrant, one detects his concept of sovereignty emerging. Two stages in his thinking must be distinguished. In an earlier work, his *Commentary on the Sentences*, written between 1254-56,[54] Thomas assumes an extremely harsh view of tyranny. While he does not openly advocate tyrannicide, he mentions it without condemnation in treating the subject of the obedience due a tyrant.

He begins this section by entertaining the objection that it would seem legitimate for anyone to re-take what has been seized from him unjustly. If secular princes have been guilty of such seizures, there would seem to be no obligation of obeying them. In addition, it would seem that if it is legitimate to slay usurpers, e.g., Caesar, then it would appear one does not have to obey these powers. In his contrary argument he quotes from the New Testament (I Pet. 11:18) and Rom. 13:2) wherein Christians are urged to obey their masters and admonished that those who resist the powers that be are withstanding the ordinance of God.

The solution Thomas offers is well-developed and clearly expressed. It is true that we are bound to obey authorities inasmuch as their authority is from God, but we are not bound in instances when it is not from God. He now distinguishes two ways in which authority may be thought of as "being from God": first, as to the mode of acquiring authority; second, as to the use made of authority.

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[53] *Ibid*., i, 5, pp. 21-23.

[54] Gilby, *op*. *cit*., p. 267.

Under the mode of acquiring authority we must further distinguish two defects: first, with regard to the person being unworthy of it; second, with regard to the manner of acquiring, namely, if it be obtained by violence, simony, or some other illegitimate means. In the case of the first defect one must obey authority, even when the incumbents are unworthy, since all authority is always from God. In the case of the second defect, however, there is no lawful authority, for one seizing power is not a true holder. Thus, when it is possible, one may repel this domination, unless the usurper should later become a genuine ruler by the consent of his subjects or by recognition given him by a higher authority.

As to the use of authority, its perverted form or abuse may take two forms: first, if a command is issued contrary to virtue, we are not only not obliged to obey it, we are obliged to disobey it, in keeping with the examples of the martyrs. Second, should the form of abuse consist in exceeding legal rights, e.g., a master exacting services a servant is not obliged to render, then one has a choice. He is not obliged to obey, neither is he obliged not to obey.

Thomas sums up this significant argument by stressing that authority seized by violence, since it is not a true authority, demands no obligation of obedience. He then alludes to the instance of Cicero justifying Caesar's assassination. According to Cicero, this was domination obtained by violence and ruse; it was forced upon the populace, and there was no opportunity of recourse to a superior who might pronounce judgment upon the usurper. In this case, says Thomas, he that killed the tyrant to liberate his country is praised and rewarded.[55]

That this earlier view, which seems to permit tyrannicide by a private individual, was not his mature opinion, will be indicated later. The overthrow of the tyrant, this limitation on sovereignty, is to be a public, not a private matter. Yet, at all times Thomas is unswervingly opposed to tyranny and seeks its eradication. In discussing the morality of sedition under a tyrannical ruler he states there is truly no sedition in overturning a government of this kind unless in the act of toppling it there would be a greater disturbance and the populace suffer more than from the tyrant's regime. It is the tyrant who is guilty of sedition. It is he who encourages discord in order that he may lord it over his subjects for his private good and their injury.[56] It should be noted that this passage is from a later work, probably written between 1271-72, and no mention is made of action against the tyrant by a private individual.[57]

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[55] Commentum in quatuor libros sententiarum, II, dist. 44, q. II, a.2 (26 vols.; Parma: typis Petri Fiaccadori, 1856), VI, 787. (Italics mine.)

In the _De regimine principum_, written between 1260-65,[58] we find a very detailed account of how the tyrant is to be contained and unwarranted sovereignty limited.

With St. Thomas tyranny is best assailed by never being allowed to sink its roots into the political soil. A scheme must be devised to prevent the multitude from falling into the grasp of a tyrant. First, select a candidate of such high moral worth that the likelihood of his drifting into tyranny would be remote. Second, so arrange the governmental structure that his opportunity to tyrannize is removed. Third, so temper the king's power that it will not be easy for him to drift into tyranny.[59]

Both Phelan and Carlyle believe that if the remarks of Thomas on this matter had been completed, the latter would have recommended the mixed constitutional form of government he has been quoted as advocating in the Summa theologica, I-II, q. 105, a.1.[60]

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[56] _Sum theolog_., II-II, q. 42, a.2, ad 3.

[57] Gilby, _op_. _cit_., p. 267.

[58] _On Kingship_, _To The King of Cyprus_, _op_. _cit_., "Introduction" by Phelan, p. xxx.

[59] _De reg_. _prin_., _op_. _cit_., i, 6, pp. 23-24.

In the same spirit as John of Salisbury and that of our founding fathers in the Declaration of Independence, Thomas observes that a certain amount of tyranny on the part of a king should be tolerated. Practically, there would be more perils involved in overthrowing a mild tyranny than would occur in allowing it to exist. Moreover, it sometimes happens that the leader enlisted against the tyrant, once the latter is conquered, may seize power and subject the state to worse abuse than that imposed by the original tyrant.[61]

Thomas notes that some have advocated tyrannicide and quote Old Testament warrant for their actions. But he believes that this opinion is not in accord with apostolic teaching. St. Peter's epistle, to which we have alluded earlier (I Pet. 2:18-19), is quoted as forbidding opposition to masters, evil, as well as good. Moreover, the patient suffering of the Roman martyrs converted many pagans to the true faith. In addition, the Old Testament speaks of those being slain who undertook to kill Joas, king of Juda, even though the latter had fallen from the worship of God.[62]

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[60] Phelan, op. cit., p. 24, n.2. Carlyle, op. cit., V, p. 94.

[61] De reg. prin., op. cit., i, 6, pp. 24-25.

Should private persons on their own presumption attempt to kill rulers, even though they be tyrants, this would occasion great danger for the populace as well as the rulers. It would establish a dangerous precedent and encourage the wicked who are always seeking an opportunity to slay a ruler, whether he is a tyrant or not. To these wicked subjects any form of government is burdensome. In the light of this fact, there would probably be a greater danger to the people from the loss of a good king than the relief gained from having a tyrant removed.[63]

Now Thomas asserts his view that to proceed against a tyrant is not to be undertaken on the private presumption of a few, but by public authority. If it belongs to the right of a given multitude to provide itself with a king, it is not unjust that the king be deposed or have his power restricted by that same group should he become a tyrant. The people, in this instance, are not acting in bad faith. Though they may previously have subjected themselves to him by covenant, it is he who is causing the covenant to be breached by not discharging faithfully the demands of the kingly office.[64]

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[62] Ibid., pp. 25-26.

[63] Ibid., pp. 26-27.

[64] Ibid., p. 27.

If it should so happen that a higher authority has jurisdiction over a ruler who has become tyrannical, a remedy against the wickedness of this subordinate king should be sought from his superior. An example of this occurred when the Jews sought alleviation from the tyranny of Herod's son, Archelaus, by appealing to Caesar Augustus.[65]

In the case of all human aid against tyranny being exhausted, Thomas, in the tradition of Augustine and John of Salisbury, urges that recourse must be had to God, the King of all. He is the one who can turn the cruel heart of the tyrant to mildness in due time. This He did often as Old Testament accounts verify. But to deserve this benefit from God the people must improve their moral lives. For, it is by divine permission that tyrants receive their power to rule; their tyranny is a punishment for the sins of the populace.[66]

In the Summa theologica Thomas reiterates some of the foregoing arguments in respect to the restraining of tyrants. Pertinent to our subject of tyrannicide, he observes that it is not lawful to kill an evildoer on one's personal initiative. This duty belongs to him alone who has charge of the community's welfare, since the slaying is being done for the welfare of the entire community. It must be remembered that the common good is entrusted to persons of rank having public authority, hence, they alone, and not private individuals, may kill evildoers.[67]

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[65] Ibid., p. 28.

[66] Ibid., pp. 28-29.

Thomas will have it that even a wicked ruler is due respect and explains his opinion in this manner. Normally to honor a person is to recognize him as possessing virtue; virtue is the due cause of his being honored. However, it is also true that a person may not only be honored for his virtue, but also for that of another. Thus it happens that princes and prelates, though they be wicked, are honored as standing in God's place, and as representatives of the community over which they are placed. In like manner, even a fool is to be honored if he should stand in God's place or be a representative of the entire community. A parallel to the foregoing may be seen, observes Thomas, in the honor accorded parents, masters, and aged persons; the latter are expected to be virtuous, but it sometimes happens they are not.[68] Here Thomas seems to be making a distinction between the respect due one merely because he occupies a lofty position, as opposed to what one might feel about the personal unworthiness of the candidate.

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[67] Sum. theolog., II-II, q. 64, a.3, corpus.

[68] Ibid., q. 63, a.3, corpus.

That the above can hardly be construed as a weakening of his attitude toward tyrants is evident from the general tenor of his writings. His implacable opposition to tyrants is particularly manifest in the *De regime principum* in those passages where he warns them of the dire fate reserved for all such malefactors. Here Thomas, in a typically medieval pattern, is urging moral restraint upon rulers as a form of curbing unwarranted sovereignty.

Since kings who rule virtuously are promised a transferral of that royal honor in heaven, only a fool would sacrifice that ultimate reward for a few trifling, temporal goods. Yet, a tyrant makes just this type of absurd choice. On the worldly plane he forsakes friendship, for in despoiling others he destroys the common bond on which all friendship is grounded. In seeking their private good instead of the common good, tyrants vitiate the communion that would normally obtain between themselves and their subjects. Virtuous kings enjoy stable governments because their subjects, out of the love they naturally bear just rulers, will expose themselves to any dangers on behalf of the former. This devotion, as well as stability of rule, the tyrant will never know.[69]

Moreover, the government of a tyrant is short-lived because it is hateful to the masses, and what is distasteful to them cannot long be preserved. Given an opportunity, some will instigate a rebellion and soon be joined by more of the populace. Men can hardly be expected to remain faithful to a ruler when he has forfeited their love. Nor, says Thomas, would it seem to be a violation of fidelity, according to many observers, to oppose the wickedness of tyrants in any way whatsoever. Fear is the tyrant's only weapon. Yet, a people suppressed by fear will explode all the more violently against a ruler when an opportune moment presents itself. They resemble water confined under tremendous pressure, ready to erupt with great violence when an outlet is provided. Then too, men, desperate from fear, will dare anything calculating that they have nothing to lose. All of these factors contribute to the short duration of tyrannical regimes.[70]

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[69] *De*. *req*. *prin*., *op*. *cit*., i, 10, pp. 44-46.

Again Thomas takes note of the fact that God permits tyrants to be His means of punishing the sins of the people. Yet, God does not allow these tyrants to reign for long and invariably casts them down after they have served His purpose.

Experience reveals that virtuous kings acquire more wealth through justice than tyrants by rapine. For, tyrants, in order to protect themselves, are obliged to spend more on satellites and guards than they can rob from the people. A just king is protected by his subjects' love; a tyrant must rely on hirelings.[71]

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[70] *Ibid.*, pp. 46-48.

The tyrant not only foregoes the happiness due a virtuous king but also merits unusual temporal and spiritual punishments. For if a criminal who robs, enslaves and kills an individual deserves death and external damnation, how much more does a tyrant who perpetrates these crimes on countless subjects.

An added feature in the lives of such tyrants is that they rarely repent. Puffed up with pride and besmirched by the flattery of their fellow conspirators they are rightfully abandoned by God. Seldom do they make restitution for the injuries they have occasioned and the goods they have illicitly acquired. Yet no one doubts that such tyrannical rulers are bound to such restitution.[72]

Not only do tyrants rarely seek to repair the evil done but compound the seriousness of their transgressions by scandal. By their boldness in acting with impunity they induce their subjects to embark on similar careers involving flagrant disregard for authority.

But perhaps the greatest malice attached to a tyrant's defection stems from his dishonoring the dignity of his high office. Certainly, if earthly rulers are wont to inflict more severe punishment on those trusted ministers who turn traitorous, then God accordingly would be expected to deal far more harshly with His kingly representatives who repudiate Him by resorting to tyranny.[73]

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[71] Ibid., pp. 48-49.

[72] Ibid., i, 11, p. 50. Cf. also Sum. theolog., op. cit., II-II, q. 62, a.7., corpus.

From the evidence cited it would appear that throughout his writings Thomas never ceases to view tyranny with abhorrence. In this stand he typifies the general consensus of medieval political writers.

It has been mentioned, however, that his earlier views of tyrannicide, as expressed in the *Commentary on the Sentences*, differs from a latter opinion set forth in the *De regimine principum* and the *Summa theologica*. The former opinion appears to condone tyrannicide, the latter forbid it. Carlyle views this as merely a shift in the manner in which the unbridled sovereignty of the tyrant may be checked by the populace; for Thomas in these latter works provides many detailed safeguards for offsetting tyranny without resorting to individual assassination.[74] Gilby suggests that the attitude of Thomas toward employing such an extreme method as that approved by John of Salisbury may have been softened by tragic personal experience. Several members of his own family had died violent deaths in the bitter political rebellions that attended the overthrow of the Hohenstaufen regime within his country. In his later days he doubtlessly was more inclined toward curbing royal excesses through legislative and other less radical channels.[75]

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[73] *Ibid*., pp. 50-51.

[74] *Op. cit*., V, pp. 93-94.

After this rather detailed study of monarchy and the restraint Thomas would impose on its corrupted form, one should be in a position to judge the nature of the form of government he favored. Scholars are not in agreement on this score. The disagreement narrows to a consideration of whether Thomas is advocating a pure monarchy or a mixed (constitutional) monarchy.

McIlwain contends that Thomas' preference seems to be in favor of a pure monarchy in which the king is "absolute."[76] The former is aware of the previously quoted passage in which Thomas states everyone should have a role in government (S.t., I-II, q. 105, a.1, corpus). However, McIlwain interprets this as meaning merely that the populace should have a voice in selecting and electing a ruler, but not in controlling his actions later. Thus the latter observes: "On the whole it is pure monarchy, whether elective or not, which seems to me to be St. Thomas's natural choice as the general form of royal government best adapted to the needs of Europe in the thirteenth century."[77]

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[75] Op. cit., pp. 174-75 and p. 289.

[76] Op. cit., p. 330, n.1.

Other scholars disagree with McIlwain's stand. Professor Charles McCoy argues that Thomas favors a "mixed monarchy." The key to the issue, according to McCoy, lies in the concept of the people sharing in rule without dividing the government. If "mixed monarchy" demands two independent and competing organs of government, then McIlwain is correct. However, McCoy continues, if we think of pure monarchy being "tempered" by "tying the instruments it was to act by," then we have the "royal and political" rule Thomas favored and not the "royal" rule alone, characteristic of pure monarchy.[78] Furthermore, McCoy believes the passage from Thomas alluded to by McIlwain does speak of tempering the ruler by making him responsible to the people through the elective process and establishing a political body with governing powers under the one presiding over all. Lastly, McCoy asserts that the ruler is responsible to the people through the ratifying process of law sanctioned by their representatives (S.t., I-II, q. 95, a.4, corpus). To this passage additional reference will be made in the next division of this work.[79]

Phelan, too, contends that there is no theory of absolute monarchy in either the Summa thrologica or the De regimine principum. Especially in the latter work does he stress the insistence of Thomas on a controlled and subordinated monarchy. Phelan bases his contention on the passage in the latter work where Thomas outlines the steps to be taken to insure that the opportunity for a king to become a tyrant be removed or minimized. In addition, Phelan notes, Thomas was certainly aware that the country of Cyprus, to whose ruler he had dedicated the De regimine principum, was ruled by the Assises de Jerusalem, a juridical body of laws which, in the last analysis, posited sovereignty in a body of feudal barons presided over by a king.[80]

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[77] *Ibid*., p. 331-32, n.l.

[78] *Op*. *cit*., pp. 216-17.

[79] *Ibid*., pp. 218-19.

In the latter camp also is Gilby. He admits that the concept of a written constitution, amendable only by a referendum, and acting as a restraint on both the legislature and executive was only hazily anticipated in the middle ages. Yet, the law was a measure agreed on by free men and the ruler had to observe its bounds.[81] In addition Gilby notes that Thomas's practical ideal of government resembled the constitutional monarchy of the nineteenth century, a mixture of monarchy, aristocracy and democracy. While Thomas never advocated the idea of one man, one vote, he had one test for any regime: it should be for the common good.[82]

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[80] Op. cit., "Introduction", pp. xxxvi - xxxvii.

[81] Op. cit., p. 288.

One last opinion in this matter. Carlyle feels that the general import of Thomas's works shows he clearly preferred a mixed or constitutional state. Thomas, observes Carlyle, does not show any special acquaintance with the constitutional movements of his time, but in his treatment of the representative principle and the elective method he comes very near to constitutional development.[83]

The greater mass of evidence seems to dictate that Thomas did prefer a mixed or constitutional form of monarchy. This position will be justified, it is believed, when the next division of this treatise sets forth the restraining role Thomas assigns to law, the common good, and justice.

Limitation of Sovereignty by Law, Common Good, and Justice

As has been noted before, the middle ages not only stressed the concept of law, they were, in fact, obsessed with its operation. To this phase of political philosophy Thomas made an incalcuable contribution. He erected a legal edifice of such proportions that even those who condemn his doctrines in other fields of endeavor are constrained to admire this aspect of his philosophical system.

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[82] Ibid., pp. 294-95.

[83] Op. cit., V, pp. 95-97.

Pertinent to the concept of sovereignty he envisioned law, in the final analysis, as the most powerful weapon that could be leveled against the strongholds of tyranny and capricious despotism. His classical definition of law concisely demonstrates the Christian political spirit of his age and consistently lends itself to the political and ethical conclusions he was able to infer from it.

For him law "is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[84] The precision and compactness of this definition will become increasingly evident as this treatise proceeds. The concept that law must originate in reason and be intended for the common good will receive unusual stress from Thomas as he proceeds to develop his legal theory.

Among the types of law none is higher than the divine. True to his Christian heritage and Aristotelian committment, Thomas conceives of an orderly and purposeful universe directed by God's master plan. The Divine Wisdom possesses the character of art in that it is an exemplar or idea according to which all things are created. Thus, the Divine Wisdom, insofar as it moves all things to their due end, bears the character of law.[85] "Accordingly, the eternal law is nothing else than the type of Divine Wisdom, as directing all actions and movements."[86]

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[84] Sum. theolog., I-II, q. 90, a.4, c: "nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata."

But man must be capable of learning about this divine law or plan in order that he may direct his life to its proper end according to this eternal blueprint. This direction is achieved through the natural law. The rational creature is unique among all beings in that he is subject to divine providence in a most excellent way. This way consists of his partaking in a share of Providence by being provident for himself and others. Wherefore, this rational being has a share of the Eternal Reason, by which he has a natural inclination to his proper act and end.[87] Thus, we find Thomas saying: "It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law."[88]

But in addition to natural law man must be directed in his activities by laws specific and applicable to his normal human concourse within the community. These are the laws with which most men are familiar. Far from superseding the natural law they are based upon and drawn by reason from the general precepts or principles of the natural law to fit specific human situations.[89] These human laws are necessary, Thomas explains, since two kinds of rights must be insured; natural and positive. The written or civil law contains natural rights but does not establish them, for these rights derive their force from nature itself. But civil law, based on an agreement between men, contains and makes valid positive rights by giving them the force of civil authority.[90]

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[85] Ibid., q. 93, a.1, c.

[86] Ibid.: "Et secundum hoc, lex aeterna nihil aliud est quam ratio divinae sapientiae, secundum quod est directiva omnium actuum et motionum."

[87] Ibid., q. 91, a.2. c.

[88] Ibid.: "Unde patet quod lex naturalis nihil aliud est quam perticipatio legis aeternae in rationali creatura."

It should be evident by now that the concept of sovereignty within the state, according to Thomas, is invariably bound up with the restraint or liberty permitted by these three types of law: eternal, natural and civil. Man is the creature bound by law and all three types will in varying degrees affect his human activity. Thomas, in explaining the necessity of law for man, states that law belongs to that which is a principle of human acts. Now reason is the principle of human acts, so it is to this principle that law must necessarily be referred. Now the first principle in practical matters is the last end and this is happiness. Hence, law refers to the relationship of happiness. Thus those legal enactions are just which are adopted to produce and preserve happiness. Now in every genus that which belongs to it chiefly is the principle of all its other components. Thus since law is chiefly ordained to the common good, then no other precept can be a law unless it regards the common good.[91]

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[89] Ibid., q. 91, a.3, c.

[90] Ibid., II-II, q. 60, a.5, c.

Of the three types of law mentioned above divine law is superior and its precepts, in some way, are known to all. Thomas explains that no one can know this law in itself except the Blessed who see God in His essence. But every knowledge of truth is a reflection of and a participation in this eternal law. Thus, all men know truth to a certain extent as to the common principles of natural law and regarding other principles, some more, some less. In this respect all are more or less cognizant of the eternal law.[92]

Since natural law is a reflection of the eternal law it becomes the criterion against which the validity of all human or civil law must be tested. Human law ranks beneath both the eternal and natural, but this should in no way cause one to view it with contempt. It is this human law which will most profoundly affect man in his political sojourn on this planet; it with this form of law, properly contained, that one is very definitely concerned in determining the limits of sovereignty.

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[91] *Ibid.*, I-II, q. 90, a.2, c.

[92] *Ibid.*, q. 93, a.2, c.

Obviously, human law has its limitations, and Thomas wisely points them out. It cannot hope to forbid all the vices from which virtuous men would abstain but only those more grievous vices which would be most injurious to society.[93] The purpose of human law is to lead men to virtue, not suddenly, but gradually. If it tried to impose upon imperfect men all of the burdens of the virtuous, the former, unable to bear them, would probably break forth in greater evils.[94] In addition, man can make laws only in matters where he is competent to judge. Since he cannot judge interior movements, which are hidden, but only exterior acts, man's civil enactments cannot curb or direct a person's interior moral life. Moreover, human law could scarcely hope to punish or forbid all evil deeds, since while aiming to eliminate all evils it would probably abolish many good things and damage the common good, which is so necessary for human intercourse.[95]

The foregoing should suffice for an explanation of the nature and types of law according to Thomas. It is now appropriate to discuss the crucial bearing law has upon ultimate sovereignty within the state. Here one is concerned with such questions as: Who has the power to enact laws? Are rulers exempt from law? Must all laws, even unjust ones, be obeyed? In the answers Thomas provides to these and related questions one should be able to gain an insight into his concept of sovereignty.

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[93] Ibid., q. 96, a.2, c.

[94] Ibid., q. 96, a.2, ad 2.

[95] Ibid., q. 91, a.4, c.

Thomas observes, and quite rightly, that a general law must have coercive power, else any such enactment would be of no avail. This coercive power is exercised in human affairs only by those who possess public authority.[96] If coercion belongs to the law-making authority, then sovereignty will ultimately reside in that person or group of persons empowered to enact legislation.

In determining who may enact laws Thomas assigns sovereignty either to the people, or to the prince, in keeping with the constitution of a particular state. He repeats at the outset that law looks first to the common good. Now to order anything to the common good belongs either to the whole people or to someone who is vicegerent of the entire populace. Thus, the framing of law belongs either to the whole people or to that public personage who has the care of the entire community since in all other matters the directing of anything to an end concerns him to whom the end belongs.[97] Consistently, Thomas follows the foregoing passage with the observation that coercive power is vested in the entire populace, or in that public personage to whom it belongs to inflict penalties.[98] Thomas further points out that the power to punish pertains only to the framer of the law, by whose authority the pain is inflicted.[99]

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[96] Ibid., II-II, q. 67, a.1, c.

[97] Ibid., I-II, q. 90, a.3, c. Cf. also Gierke, op. cit., p. 151.

Laws may also be legitimately enacted in another manner: by custom. By repeated actions practices may become a custom and cause a law to be changed or expounded. In addition things can be established which obtain the force of law insofar as by repeated external acts the inward movement of the will and the concepts of reason are effectually declared. He explains that an activity performed again and again seems to proceed from a deliberate judgment of reason, hence, custom possesses the force of law, abolishes law, and can be an interpreter of law.[100]

Thomas sets about explaining further how a custom may properly become a law. The populace introducing a custom may, by constitution, be free or not free to make their own laws.[101] If they are free and able to enact their own legislation, "the consent of the whole people expressed by a custom counts for more in favor of a particular observance, than does the authority of the sovereign, who has not the power to frame laws, except as representing the people."[102]

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[98] Ibid., q. 90, a.3, ad 2.

[99] Ibid., q. 92, a.2, ad 3.

[100] Ibid., q. 97, a.3, c.

[101] Ibid., q. 97, a.3, ad 3.

Even when the people do not possess the power to make their own laws, or abolish a law made by a higher authority, nevertheless a prevailing custom obtains the force of law insofar as it is tolerated by those empowered to legislate. This toleration indicates approval of the custom on the part of the leaders.[103]

In still another passage concerned with the enactment of laws, Thomas shows how laws arise from the different forms of government and at the end states his preference for what he deems the best kind of law. Monarchy gives us royal ordinances, while aristocracy provides us with senatorial decrees. Oligarchy offers a praetorian type of law, while democracy issues decrees of commonalty, or the plebscite. Finally, he states, there is a form of government comprised of all of these. This is the best form of government and it is directed by laws which are sanctioned by both the nobility and the common people.[104]

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[102] Ibid.: "...plus est consensus totius multitudinis ad aliquid observandum quem consuetudo manifestat, quam auctoritas principis, qui non habet potestatem condendi legem, nisi inquantum gerit personam multitudinis."

[103] Ibid.

[104] Ibid., q. 95, a.4, c.

This latter opinion is certainly consistent with the previous contention of this work that his mature choice regarding the best form of government was a constitutional monarchy.

The safeguards Thomas imposed on the sovereign's will in this matter of enacting law are most evident. Thomas was well aware of the ancient maxim which held that the will of the prince had the force of law. He was no more ready to accept this travesty than was John of Salisbury. Reason derives its power of moving from the will for it is due to the fact that one wills an end that reason issues its command regarding those things ordained to that end. But in order that the volition of what is commanded may have the nature of law it must be in keeping with some rule of reason. Now, says Thomas, it is in this sense that we are to understand the expression that the will of the sovereign has the force of law, otherwise the sovereign's will would savor of lawlessness.[105] In brief, Thomas is asserting that the sovereign, in discharging his phase of the legislative process, must be guided by reason, not whim or caprice.

In considering the issue of whether Thomas believed the ruler was subject to the law one encounters a passage that demands an explanation. He is answering the objection posed by Ulpian's maxim that the sovereign is exempt from the law. The sovereign is exempt from the law as regards its *coercive power* (*vis coactiva*) since, properly speaking, no man is coerced by himself, and law takes its coercive authority from the sovereign himself. In this sense the ruler is exempt from the law since no one is competent to pass sentence on him if he acts contrary to law. But as to the *directive force* (*vis directiva*) of law the prince is subject to the law by his own will. Thomas supports his argument with quotations from pagan and sacred sources condemning those who impose laws on others but do not themselves obey them. The sovereign should fulfill the law out of his own free volition, not out of constraint. His conduct should be that of the righteous man who is not coerced but obeys the law willingly.[106]

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[105] *Ibid.*, q. 90, a.1, ad 3.

It is quite apparent that Thomas is offering the same solution to this difficulty as that advanced by John of Salisbury and alluded to earlier in this work. So lofty was the concept of regal authority, it was the common theoretical expectation of the middle ages that the king would obey the law and seek the common good voluntarily, not be compelled to do so. While it was true that no ordinary process or writ could be employed against the king, it is evident from his treatment of this subject in the De regimine principum that Thomas believed the community possessed the power to restrain, and even depose, an arbitrary monarch.[107]

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[106] *Ibid.*, q. 96, a.5, corpus, and ad 3.

There is one other mention of the sovereign apparently being above the law. This occurs, Thomas says, in instances of expediency, when the ruler may dispense from the law and so change it with regard to time and place.[108] He points out that a dispensation is a measuring out to individuals of certain common goods in fair proportions. Now, it may happen that a general precept normally conducive to the common good may not be a good for a particular individual in a given circumstance. In fact, the precept may hinder some higher good, or even be the source of evil. Now someone in authority, not just anyone, must have the power to declare that the law need not be observed in this case. Such a dispensation falls to the lot of the ruler. However, as with the enactment of laws, the ruler who dispenses is strictly bound by the considerations of reason and concern for the common good. Never should he dispense at the mere impulse of his will.[109]

The evidence cited leaves little doubt that Thomas believes the ruler is restrained in his legislative capacity by the safeguards thus far indicated. The ideal ruler of the middle ages is not the seventeenth century fabrication of Hobbes, who envisions law solely as an emanation of the monarch's will.

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[107] Carlyle, op. cit., V, pp. 475-76.

[108] Sum theolog., op. cit., I-II, q. 96, a.5, ad 3.

[109] Ibid., q. 97, a.4, c. Cf. also q. 96, a.6, c; II-II, q. 88, a.10, corpus and ad 2.

Perhaps the most powerful check on sovereignty offered by Thomas resides in his attitude towards the obeying of unjust laws. A ruler's attempt to seize unwarranted sovereignty might very likely follow the respected path of legality, but Thomas is quite adamant in insisting unjust laws do not command obedience from the populace. In his treatment of this problem his common-sense approach avoids the two extremes of anarchy and legal positivism.

Laws framed by men may be just or unjust. If they are just, they bind in conscience inasmuch as they are derived ultimately from the eternal law. Laws derive their justice from three aspects. First, from their end, when then they are directed to the common good; second, from their author, in that he does not exceed his power as a lawgiver; and third, from their form, that is, when the burdens they impose are leveled on all proportionately with an eye to the common good. Since each man in the community functions as a part to the whole, so it is natural that each should bear his burden equally for the good of the whole. For this reason laws imposing equitable obligations are both just and binding in conscience.

Contrariwise, laws become unjust when they oppose the human good in these three respects. First, in respect to their end, when the authority imposes burdens conducive, not to the common good, but to his cupidity; second, when the authority exceeds his power; and, third, when the laws succeed in imposing unequal burdens on members of the community even though the overall aim of the laws be that of the common good.

These unjust laws do not bind the conscience of subjects except possibly in certain cases where it might be well to obey in order to avoid scandal or a possible disturbance. Thomas even quotes St. Augustine (*De libero arbitrio*, 1, 5) to the effect that unjust laws are no laws at all.

In addition to laws that are unjust by virtue of opposing a human good, there are also laws unjust from the standpoint of opposing a divine good. The enactments of tyrants inducing subjects to commit acts contrary to divine law are instances of the latter. Definitely, such laws are not to be obeyed.[110]

Thomas explains further that any law which inflicts an unjust hurt upon a subject is not to be obeyed. The power man holds from God does not extend to this. In such a case one is not bound to obey provided, as noted before, he avoids giving scandal or inflicting a more grievous hurt.[111]

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[110] *Ibid.*, I-II, q. 96, a.4, c.

That this right to oppose unjust laws is of paramount importance to Thomas is evidenced by the attention he devotes to the subject. In discussing the question of whether Christians are obliged to obey the secular power, he clearly delineates between obeying a just and unjust authority. Faith in Christ does not void the order of justice, but rather strengthens it. The order of justice demands that subjects obey their superiors, else the stability of human affairs would be imperiled. Thus, the Christian faith by no means excuses the faithful from obeying secular princes. But men are bound to obey these secular princes only insofar as this is required by justice. Should a prince's authority be not just, but usurped, or if he commands what is unjust, his subjects are not bound to obey him, except perhaps accidentally, to prevent scandal or danger.[112]

Thomas further observes that unjust laws need not be obeyed since they are almost always opposed to natural rights. In this same category are certain laws which are rightfully established, but if obeyed, would be contrary to natural right thereby creating great difficulty. They need be obeyed only according to the presumed equity in the lawgiver's mind and not to the letter of the law.[113] In a similar vein Thomas states that while disobedience is a serious sin no one is expected to do the impossible. Hence, if a superior should belabor his subjects with a crushing burden of laws, they may refuse obedience to his precepts without sinning.[114]

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[111] Ibid., q. 96, a.4, ad 3.

[112] Ibid., II-II, q. 104, a.6, ad 3. Cf. also Cassirer, op. cit., p. 105.

Thomas is ever vigilant in safeguarding the rights of the individual against the lawless caprice of leaders. He contends that it belongs to the same authority to interpret a law that has enacted it. Now since law can be made only by public authority, only a judgment pronounced by public authority over those subject to it can be a fair decree. Thus it is unjust to compel a man to observe a law not approved by public authority or to submit to a judgment not pronounced by a public authority.[115]

It becomes evident that in the overall political concept of Thomas the ruler has power conferred upon him by the people,[116] but that henceforth he is constrained by law, must ever aim at the common good, and in so doing, is obliged to secure justice within the state. In fact, certain writers interpret Thomas as saying, in the final analysis, that sovereignty receives its basic limitation from the fact of whether or not the common good is being pursued by the ruling power.[117]

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[113] _Ibid._, q. 60, a.5, ad 2.

[114] _Ibid._, q. 105, a.1, ad 3.

[115] _Ibid._, q. 60, a.6, c.

[116] _Ibid._, q. 57, a.2, c.

Thomas will have it that this goal of justice is an absolute requirement demanded of the prince. Justice, and here he employs Ulpian's definition as found in Justinian's Digest, is the perpetual and constant will to render each his own due.[118] Justice must be in the sovereign as a master virtue, commanding and prescribing what is just; it exists in subjects as an executive and administrative virtue.[119]

The specific form of justice incumbent upon the ruler to administer is known as distributive justice. It sees to the equitable distribution of the common good and takes its origin from the proper ordering of the whole to its parts. Logically, it should fall to the lot of him possessing authority to direct the proportionate distribution of the state's common goods to its subjects.[120]

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[117] William H. Hodde, "The Concept of Nation, State and Sovereignty in the Philosophy of Saint Thomas" (unpublished Masters dissertation, Department of Philosophy, Catholic University of America, Washington, D.C., 1948), p. 26. Cf. also Gilby, op. cit., p. 198, for a similar observation.

[118] Sum. theolog., op. cit., q. 58, a.1, c. Cf. also II-II, q. 62, a.7, ad 3.

[119] Ibid., q. 60, a.1, ad 4.

[120] Ibid., q. 61, a.2, corpus and ad 3. Cf. also

Thus, one comes to see that the monarch, in the view of Thomas is no indifferent figure. As a dedicated ruler exercising his sovereignty within the bounds of legality, the common good, and justice, no figure can be nobler; as a tyrant, repudiating these ends, he is accountable to his subjects and rightly deserves the diminution of his sovereignty or its complete forfeiture.

The limitations Thomas would impose on the state's sovereignty have been traced. It remains to discuss his theory of how the influence of another great organization, the Church, could be blended into the political picture. To that aspect of sovereignty attention is now directed.

The Influence of the Church in the Sphere of Government

As noted earlier, Thomas lived in a century that saw the intemperate power claims of both Church and state adherents move towards a climax. In this violent controversy he undertakes to demarcate calmly and wisely the proper domains of the two contenders. To accomplish this task was no small achievement, but it was one for which he was eminently qualified. He was at once a theologian and a

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II-II, q. 47, a.10, corpus and ad 2 and q. 50, a.1, ad 1, wherein Aquinas insists further that it is incumbent on the king to insure the common good and asserts that the common good, in the final analysis, actually embraces and insures individual good by a proper relation of the whole to its parts.

political philosopher, and there is every evidence that he combined the skills of both professions in his search for a solution.

Thomas has been quoted earlier as saying that if man were not ordained to an end outside himself, then it would be sufficient to have doctors, tradesmen, teachers, and others, to direct him to his worldly goals. Since he does have the end of final beatitude, the responsibility of directing him to this ultimate goal belongs to the ministers of the Church of Christ. True, the end of the state is to enable men to live virtuously, but this virtuous life is ordained to an even higher end, the possession of God. In brief, the ultimate end of the assembled multitude is not to live virtuously, but through virtuous living to attain to the possession of God.[121]

If this ultimate end of man could be attained by the power of human nature, then it would be the ruler's responsibility to direct men to it. But because a man does not attain to this last end by human power, but divine, the task of directing him to it pertains not to human, but divine government. This divine government ultimately stems from that king who was not only man, but also God, namely, our Lord Jesus Christ. His spiritual ministry, distinct from the material, has been entrusted not to earthly kings, but priests, and most particularly the Vicar of Christ, the Roman Pontiff. To him all the kings of Christian peoples should be subject. That this is reasonable, argues Thomas, flows from the fact that those who have charge of intermediate ends should be subject to one who has control of an ultimate end and be so directed by him.

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[121] De regim. prin., op. cit., ii, 3, pp. 58-60.

Among gentiles, and even in the old law, priests were properly subject to kings but this situation obtained because the end of man was conceived of as residing in temporal or earthly possessions. However, the new law prescribes otherwise. Men are now directed to heavenly goods, consequently, under the law of Christ, kings are subject to priests.[122]

In the preceding passage Thomas is not asserting that the Pope holds the temporal authority. Rather, he is maintaining that it is the responsibility of the spiritual head to guide and direct the temporal state in keeping with man's ultimate end and to exercise authority over the state only with respect to the final goal of life.[123]

In a later, more specific, statement Thomas defines the limits of the Church's jurisdiction. He is answering the objection that prelates, who possess spiritual power, sometimes interfere in matters pertaining to secular authority. Thomas replies that the secular power is subject to the spiritual as the body is subject to the soul.[124] Consequently, there is no usurpation of judgment ..."if the spiritual authority interferes in those temporal matters that are subject to the spiritual authority or which have been committed to the spiritual by the temporal authority."[125] Here Thomas certainly seems to be restricting the Church's power within the confines of the Gelasian concept.

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[122] Ibid., ii, 3, pp. 60-63. Cf. also Burt, op. cit., pp. 72-75, wherein the author asserts that Thomas certainly held it was the king's obligation to provide a suitable environment in which his subjects might properly work out their eternal salvation.

[123] Carlyle, op. cit., V, pp. 349-50.

In an age of vast Christian influence he is prepared to take the stand that a Christian owes true allegiance even to an established infidel government. He explains his view in this manner. Dominion and authority arise from human law, while the distinction between believer and unbeliever arises from the divine law. Now divine law does not destroy human law which is rooted in natural reason. Therefore, the distinction between the faithful and unbelievers, in itself, does not destroy the political authority an infidel ruler may exert over a Christian subject.[126]

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[124] _Sum_. _theolog_., _op_. _cit_., II-II, q. 60, a.6, ad 3.

[125] _Ibid_.: "...si spiritualis praelatus se intromittat de temporalibus quantum ad ea in quibus subditur ei saecularis potestas, vel quae ei a saeculari potestate relinquuntur."

[126] _Sum_. _theolog_., _op_. _cit_., II-II, q. 10, a.10, c.

In the case of a heretical or apostate ruler Thomas entertains a different viewpoint. It is not within the competency of the Church to punish unbelief in those rulers who have never possessed the true faith. However, she can punish those who after once having the faith, have rejected it. It is fitting that such leaders be deprived of their subject's allegiance, for such allegiance might conduce to the corruption of the latter's faith. Thus, Thomas concludes, as soon as the sentence of excommunication is passed upon an apostate prince, his subjects are *ipso facto* released from his authority and their oath of fidelity to him.[127] Here, again, there is no attempt on the Church's part to usurp temporal prerogatives. To the mind of Thomas and other medieval Christian philosophers, the incalcuable moral damage dealt the faithful by the religious defection of a ruler, warranted such severe measures. This view is a reiteration of the principle of Gregory VII that for certain offenses the Church has the right to excommunicate and depose rulers. "This, however," as Carlyle observes, "is not the same thing as the doctrine that the spiritual authority, in principle, also holds all temporal authority."[128]

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[127] *Ibid*., q. 12, a.2. c.

[128] *Op. cit*., V, pp. 350-51. Cf. also Burt, *op. cit*., pp. 210-11 and 219-220. This author explains that in the thirteenth and fourteenth century heresy in a ruler or a subject was conceived of as a violation of the common good;

In another passage from an earlier work Thomas clearly indicates the respective realms of the *sacerdotium* and the *imperium* but poses a problem in a concluding remark regarding the power of the Pope. Both the secular and the spiritual power are of divine origin, but the secular is beneath the spiritual in those matters which pertain to the salvation of the soul. God has so ordained that in cases involving the latter, spiritual, rather than secular authority, is to be obeyed. Conversely, in matters related to the civil good, obedience is due the secular, rather than the spiritual power. Christ's reference to rendering Caesar that which is Caesar's is adduced to substantiate the latter view.[129] But Thomas now injects an exception to the latter admonition in these words: "Unless, perchance, the secular power is also joined to the spiritual power, *such as in the Pope*, who holds the pinnacle of each power, namely, the spiritual and the secular..."[130] This power the Pope holds, by the authority of Him who is Priest and King forever according to the order of Melchisedech.[131]

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heresy today is not necessarily viewed as damaging the common good.

[129] *Commentum in IV libros sententiarum*, *op*. *cit*., II, dist. 44, q. II, a.3, ad 4. Vol. IV, pp. 790-91.

[130] *Ibid*., p. 791: "Nisi forte potestati spirituali etiam saecularis potestas conjungatur, *sicut in Papa*, qui utriusque potestatis apicem tenet, scilicet spiritualis et saecularis..." (Italics mine.)

[131] *Ibid*.

In addition to the passage just cited there appears another in which Thomas seems to be asserting that the papacy has authority over both the spiritual and material domain. He is answering the objection that the Church is not the same one as that founded by Christ. In the course of his response he notes that there were two stages in the Church's development. At one time kings railed against Christ, opposed the faithful, and even slaughtered them. Now is a period, however, when kings, more enlightened, have come to know and serve Christ in fear and trembling.[132] "And therefore in this period kings are vassals of the Church."[133]

What is one to conclude from these two latter passages? Regarding the one from the Sentences, Carlyle conjectures that Thomas in this earlier work may have believed that the Pope held both powers, but abandoned this view in such later works as the De regimine principum and the Summa theologica. It might be recalled similarly that his earlier view of the means for coping with tyrannicide differed from his later opinion. The statement that kings are vassals of the Church seems isolated from his general view and may merely mean some kings were vassals of the Church.[134]

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[132] Quaestiones quodlibetales, xii, q. 13, a.19, ad 2. (Parma: typis Petri Fiaccadori, 1859), Vol. IX, p. 625.

[133] Ibid.: "Et ideo in isto tempore reges sunt vassali Ecclesiae." (Italics mine.)

It is Carlyle's conclusion, based on the views expressed in the De regimine principum and the Summa theologica, that Thomas's "normal and mature judgment was that the Pope had an indirect rather than a direct authority in temporal matters."[135] The spiritual authority of the Pope should direct men to their last end: the knowledge and enjoyment of God. The temporal realm was subject to the Pope only in those things that concerned the ordering of the human to that final goal.[136]

McIlwain shares the same view as Carlyle in this matter. The former quotes Cardinal Bellarmine's unique analysis of the seemingly contradictory view of Thomas in the Sentences (De Romano Pontifice, v, 5). Bellarmine argues that Thomas's statement regarding the secular being joined with the spiritual under the Pope either has reference to the papal states alone or, at most, means only an indirect power. To McIlwain it is quite consistent that the claim of papal jurisdiction over the entire field of human law should be advanced by canonists but not be found in the works of a great theologian such as St. Thomas.[137]

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[134] Carlyle, op. cit., V, p. 353 and n.6 on same page.

[135] Ibid., pp. 353-54. (Italics mine.)

[136] Ibid.

This section might be properly concluded by mentioning that no less an authority than Martin Grabmann agrees with both Carlyle and McIlwain in this matter. The former states that Thomas taught only an indirect power of the Church in temporal matters. According to Grabmann, the Church has a word to say in temporals only inasmuch as they relate to the supernatural.[138] This latter view seems consistent with the general thrust of Thomas's thought.

In this division an effort has been made to stress the contribution made by St. Thomas to the medieval notion of sovereignty. Though the word "sovereignty", as such, appears nowhere in his works, he evinces an implicit grasp of a supreme power within the state. To his credit he restored the Aristotelian notion of the natural necessity and reasonableness of government. His preference for constitutional monarchy led him consistently to a treatment of the means to be employed in curbing tyranny. The latter subject, perforce, involved the aspect of a limitation upon sovereignty. We have seen how he specifically applied to sovereignty the limiting factors of law, the common good and justice. His concept of the _indirect_ power of the Church in temporal matters was an eloquent testimony to the common sense and moderation that invariably characterizes his political speculation.

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[137] _Op_. _cit_., p. 236.

[138] _Thomas Aquinas: His Personality and Thought_, trans. Virgil Michel (New York: Longmans, Green and Company, 1928), p. 172.

Attention is now directed to an important medieval figure whose political importance stems principally from the extreme claim he propounded in behalf of ecclesiastical authority.

CHAPTER IV

THE EXTREME CLAIM FOR CHURCH SOVEREIGNTY

Political Concepts of Egidius Colonna

The Power of the State

The Natural End of the State

The writings of Egidius Colonna have an unique bearing on the development of this treatise. While, in certain respects, they tend to corroborate the traditional political philosophy of the middle ages, in other instances they represent a distinct departure. These innovations will receive particular stress in the light of their radical nature and the controversy they engendered in the realm of political sovereignty.

A few biographical details will serve to warrant his inclusion as a key figure in the climactic stages of the Church-state controversy of the late thirteenth and early fourteenth century. Born in Rome of the great Colonna family in 1247, he elected early in life to enter a religious order. He chose the Augustinian Order of Hermits. Impressed by his alert mind and insatiable desire for learning, his superiors sent him to the University of Paris to complete his studies in philosophy and theology.

Egidius arrived in Paris around 1269, and is thought to have been a student of St. Thomas Aquinas during the scholastic year of 1269-1270. From this university he received his bachelor's degree, as well as his licentiate and doctorate; here, too, he received an excellent grounding in the basic works of Aristotle.[1]

So impressive was his academic career that later he was awarded a teaching chair at the university. His teaching career was as impressive as his academic; so much so, that the French monarch, King Philip III, engaged him as a tutor for his son, Philip the Fair. It was at the request of this latter sovereign that Egidius wrote his *De regimine principum* around 1285. It is significant that this writing bears the exact title as the work by St. Thomas Aquinas and Tolomeo of Lucca; works of this type were frequently penned by noted medieval scholars as handbooks for royalty. Philip the Fair, extremely pleased with the treatise, directed that it be translated into French in 1286, shortly after he ascended the throne.

Egidius was destined for still higher honors. He received the title *Doctor fundatissimus*, and in 1292 was elected General of the Augustinian Order. In 1294 Pope Boniface VIII appointed him Archbishop of Bourges.[2]

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[1] *Li Livres du gouvernment des rois*, ed. Samuel P. Molenaer (London: Macmillan Company, 1899), "Introduction," pp. xv-xviii.

[2] *Ibid.*, pp. xviii-xix.

Around 1301 Egidius completed the *De ecclesiastica potestate*, a work representing the most far-reaching claim ever advanced for papal sovereignty. It was an exhaustive philosophical and theological defense of the position held by the extreme canonists.[3] As such, it was an object of extreme controversy. Egidius died on December 22, 1316.[4]

The first of his two works to be treated, the *De regimine principum*, is systematically divided into three books. The first deals with the individual ruler's government of himself; the second with the monarch's control of his family; and the third with civil government in general. Of particular relevance to the subject of sovereignty is the second part of the third book, for here Egidius treats of the best forms of government and the proper duties of a monarch during periods of peace.[5]

Throughout his works the heavy reliance of Egidius upon Aristotle is extremely evident. From Aristotle's *Politics*, Bk. 1, he derives the concept that the state is founded with some good in mind and from the former's *Ethics*, Bk. 1, he quotes the principle that every action and choice seems aimed at the securing of some good. Now, if all men ordain their acts to this end of establishing the state, this end must certainly be a good; hence, the organization of the state becomes a human good.[6]

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[3] McIlwain, *op. cit.*, p. 249.

[4] Molenaer, *op. cit.*, p. xix.

[5] *Ibid.*, p. xxii.

The impulse men have for forming the state is a natural one. This good or end which motivates them is not merely a goal which appears good; it is an actually existing good. The state embraces the home and the village and is more perfect and more self-sufficient than any one of these other communities.[7]

In the traditional Aristotelian vein Egidius hammers away at the theme that man is by nature a political animal. Man seeks to live according to laws and laudable custom. From the political community men seek their fulfillment.[8] Egidius is at pains to explain the manner in which man by nature is a civil animal. In this respect man is not bound by such an inflexible law as that which specifies that fire will always burn and a stone will always tend downward, but it is naturally fitting to him that he possess a certain impulse and certain natural appetite toward living civilly.[9]

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[6] Egidius Colonna (known also as Aegidius Columna Romanus and Giles of Rome), _De regimine principum_ (Rome: apud Bartholomaeum Zannettum, 1607), iii, 1, 1, p. 401. (This Latin edition will be cited in all references to this work. There is no English translation of the _De regimine principum_, hence all translations are mine.)

[7] _Ibid_., p. 402.

[8] _Ibid_., iii, 1, 2, pp. 404-05.

[9] _Ibid_., iii, 1, 3, p. 406.

It is true, he observes, there are certain classes which may be said not to live civilly and for various reasons. The first group is comprised of those who are extremely poor and may have to isolate themselves in an endeavor to secure sustenance. The second group is comprised of criminals. A third class is formed from those who voluntarily withdraw from society for a higher life of contemplation in some religious organization.[10]

Again he proposes that the naturalness of the state arises from the fact that it embraces, completes, and is the end of such lesser communities as the family and the village. He then quotes Aristotle (Politics, Bk. 1) to the effect that whatever is the end of a generated being is its nature and, of course, would be natural.[11] "The state, therefore, which is the end of the home and the village will be what is according to nature, in that it will become the end of generation naturally."[12]

Just what does man hope to derive from founding the state? Egidius answers that man founded the state for three reasons: first, that he might continue to live; second, that he might live adequately; and third, that he might live virtuously in conformity with his rational nature.[13]

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[10] Ibid., pp. 406-07.

[11] Ibid., iii, 1, 4, p. 408.

[12] Ibid., p. 409: "Civitas ergo, quae est finis generationis domus et vici quid secundum naturam, eo quod fit finis generationis naturaliter."

Having established a natural basis for the state, Egidius proceeds to a discussion of the forms of government and his personal preference. In this exposition there can be seen the emergence of his concept of sovereignty.

Preference for Monarchy in Opposing Tyranny

In establishing the need for a ruling authority within the state, Egidius again reverts to Aristotle, this time to borrow the "natural slave" concept from Book 1 of the *Politics*. This slave by nature is one who is deficient in intellect and does not know how to govern himself. From this it follows that there must be a natural master who excels in intellect and prudence and knows how to direct himself and others to their due end. This is the same natural arrangement that inclines men to dominate animals, males to regulate women, and adult men to direct young boys.

Egidius employs a forceful analogy to clinch his argument. Just as a bowman cannot discharge his arrow properly or direct it to its goal unless he see the target, so the king cannot direct the citizens to their goal unless he perceive their end with the highest degree of prudence.[14]

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[13] *Ibid*., iii, 1, 2, pp. 403-04.

Thus, for Egidius government is the directing of the populace to its end. The form of government best calculated to achieve this aim is monarchy. In positing his preference, however, he demonstrates very clearly that he is cognizant of opposing opinions. Thus, he distinguishes between a *regimen politicum* and a *regimen regale*. The latter form of rule is that in which the ruler governs according to his free will and the law which he has established. The former system is not according to the monarch's choice or the laws he has established but depends on laws enacted by the citizenry.[15]

Egidius proposes four reasons why monarchy is the ideal form of government. First, there is more unity and concord if only one person rules. Second, more civil power is generated by one individual directing the combined coordinated efforts of many. As an example, he observes that the over-all power of many men rowing a boat would be dissipated were it not directed by one person. A third argument is drawn from nature herself: she employs one organ, the heart, as a basis for bodily activity. The soul alone rules and restrains the animal body; one leader directs a community of bees; finally, one God rules the entire universe. The fourth and last reason is predicated upon historical experience. Egidius maintains that those states of antiquity not directed by monarchy enjoyed less peace, incurred more debt, and suffered more from war than those nations guided by a solitary ruler.[16]

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[14] *Ibid*., i, 2, 7, pp. 64-65.

[15] *Ibid*., ii, 1, 14, p. 260.

With characteristic fairness he undertakes to counter the arguments of those opposed to monarchy. They contend that it is better to be governed by a number of rulers rather than one for three reasons. First, many leaders would possess more knowledge than one; second, one person is more readily corrupted than many; third, many directors would not be as likely as one to swerve from pursuit of the common good. To the first objection Egidius responds that a king has many advisers and should be able to amass for himself all of the wisdom they possess. Against the second argument he contends that should a ruler desire to be corrupt, it would hardly be possible to become perverse unless all of his counsel, these wise and virtuous men with whom he is associated, should become perverted, a highly unlikely possibility. Egidius answers the third objection in typically medieval fashion. Should a ruler spurn the counsel of the wise and the good and pursue his private interests to the exclusion of the common good, this leader is really no longer a king, but a tyrant. For such a corrupt person to govern would be truly worse than to have many rulers for, with John of Salisbury and Thomas Aquinas, he believes tyranny to be the worst form of rule.[17] If this last response appears somewhat unsatisfactory, it must be recalled that common medieval political theory, to which frequent allusion has been made, lay great stress on the ruler personally restraining himself. A king, so lofty was his position, was simply not expected to become a tyrant!

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[16] *Ibid.*, iii, 2, 3, pp. 456-58.

Not only does Egidius favor monarchy but further chooses the hereditary variety as opposed to the elective. His reasons are both ingenious and compelling. Under a hereditary system a king, adequating the good of his kingdom with his own, will certainly be more solicitous for the welfare of his country. His sons, aware that they will someday inherit the diadem, will not be unlearned in the art of ruling. Accustomed to high honors, their hearts will not be puffed with pride when their turn to assume the scepter arrives. They would be less likely to become tyrants than those newly thrust into high positions by election. Also, from the standpoint of the populace there are advantages. Just as a custom becomes almost quasi-natural, the people become used to obeying, in fact, easily obey a father, his sons, and, eventually the latter's progeny. When there has been obedience to the same family, there is less of litigation. In this arrangement citizens are naturally inclined to obey. As a result the peace of the realm is maintained; there is less internal friction; less opportunity for tyranny.[18]

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[17] *Ibid*., iii, 2, 4, p. 460.

True to the medieval tradition Egidius unmistakably asserts that the test of any government is its quest of the common good; the king must pursue virtue, must avoid tyranny. The king, he explains, may be viewed in a three-fold light: first, as a man; second, as a minister of God; third, as a director of the multitude. As a man, he should follow his reason and intellect. As a minister of God, he should repose his happiness in the deity since, as a ruler, he shares vicariously what God possesses essentially and perfectly. As a director of the multitude, he ought to incline to the common good, especially in view of his role as God's minister. In God the sovereign should repose his ultimate happiness, since God is that good which is most intelligible, most universal, and most common. It is this same God who demands that rulers govern their subjects justly and holily through prudence and law.[19]

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[18] Ibid., iii, 2, 5, pp. 461-65.

[19] Ibid., i, 1, 12, pp. 38-39.

Egidius continues to emphasize the king's essential role. Just as the soul rules and conserves the body, so the king rules and conserves his kingdom; as the soul is the salvation and life of the body, so the monarch, if he rules justly, is the salvation and life of the kingdom. Moreover, just as the worst calamity for the body is to be abandoned by and to be no longer ruled by the soul, so the worst fate for a kingdom is to desert the royal laws and precepts and cease to be directed by the king.[20]

The influence of Aristotle is seen in the distinction Egidius draws between the king and the tyrant. "There is a difference between the king and the tyrant: because the king principally inclines to the common good ...The tyrant, however, on the contrary inclines toward a private good."[21]

To his credit Egidius manifests a thorough-going acquaintance with the devices tyrants employ to insure tenure. They begin by oppressing the finest people. The wise must be destroyed for they early detect the machinations of tyrants. For similar reasons these oppressors deny the people opportunity for teaching and studying.

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[20] Ibid., iii, 2, 34, pp. 548-49.

[21] Ibid., i, 3, 3, p. 160: "Differentia est inter regem et tyrannum: quia rex principaliter intendit bonum commune ...Tyrannus autem e contrario principaliter intendit bonum privatum."

Organized societies are disbanded and spies engaged to harass the populace. Dissent is sown among friends, and subjects are systematically reduced to poverty to forestall any substantial reaction. Invariably wars are instigated with foreign countries. When the tyrants find themselves enmeshed in their own intrigues, they resort to the use of foreign bodyguards. Finally, comments Egidius, they pit one group against another just as one would strike one nail against another. Obviously, all such insidious practices should be studiously avoided by a virtuous king.[22]

Evidence of the same practical political wisdom shared by John of Salisbury and Thomas Aquinas is revealed in still another view of Egidius. He comments upon the great calamaties that arise from civil disturbances as opposed to the advantages of a virtuous royal reign. But even the best of rulers might in a given instance be guilty of some slight misrule; this defect the populace should tolerate rather than risk the evils that might flow from civil disobedience to regal precepts.[23]

It should be evident from the excerpts cited so far that Egidius is following that current of medieval thought which tended to elevate the monarch's position to almost sublime heights. So far he is consistent. However, as will shortly be seen, when Egidius treats of the king's relation to law, a theory of absolute monarchy, foreign to prevailing medieval thought, begins to arise. This theory is of extreme significance to the concept of sovereignty.

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[22] *Ibid*., iii, 2, 10, pp. 477-80.

[23] *Ibid*., iii, 2, 34, pp. 549-50.

Law and the Monarch

For Egidius laws are defined as certain rules of action directing one to the common good and endowed with compulsive power. In the tradition of St. Thomas Aquinas, he asserts that whoever has the right to direct others to the common good has the authority to legislate. Since the common good is pursued either by the entire community or by the ruler (who ought to be a common representative), either may properly enact laws.[24]

Egidius actually begins with a fourfold division of law: 1) *jus naturale*, 2) *jus animalium*, 3) *jus gentium* and 4) *jus civile*. For purposes of harmony, he contends that these four classifications of law may rightly be reduced to two: 1) *jus naturale* and 2) *jus positivum*. Just as there is a twofold order of justice there is a twofold law, natural and positive.

Natural law, according to Egidius, extends to those things which are adequate or proportionate to the essence of a thing; to those things which natural reason dictates;

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[24] *Ibid.*, iii, 2, 27, p. 526.

and to those things for which there is a natural inclination or impulse. Positive law embraces the realm of things which are deemed just, not from their nature, but from the agreement and institutions of men. An example is provided to illustrate the difference. It is natural for all men to speak, but a positive element arises in that all men do not employ the same words or idioms in their language.[25] It is obvious from Aristotle's distinctions, says Egidius, that all law is reducible to natural and positive law. The former is not written, but is held commonly; the latter is written, particular, and legal.[26]

In speaking of positive law being enacted by those whose duty it is to direct others to the common good, Egidius lauds the significant role of the community and the prince. In their legislating they parallel God's action, for divine and natural law are founded in Him whose prerogative it is to direct all things to Himself, the ultimate common good.[27]

The manner in which these two types of law are promulgated are obviously different. Positive law must be explicitly promulgated. Natural law is implanted by God in the heart of man; it is promulgated and made known to every man when he begins to exercise his reason. Through it he learns what must be pursued and what avoided.[28]

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[25] Ibid., iii, 2, 24, pp. 517-18. (Italics mine.)

[26] Ibid., p. 520.

[27] Ibid., iii, 2, 27, pp. 526-27.

Having taken considerable pains to distinguish between the two types of law, Egidius applies his conclusions in a manner that bears significantly on our subject of sovereignty. He asks whether it is better to be ruled by a good king or a good law. Aristotle is quoted (*Politics*, Bk. iii) as answering that it was better to be ruled by a good law, and for these reasons. First, a king is, as it were, a mere organ or preserver of law, and as such is inferior to the law which, in itself, is more basic. Second, a king is more susceptible to corruption than a law, for even the best men at times abandon reason and succumb to anger and passion; a law, however, looking always to reason is thereby superior.[29]

To these arguments Egidius replies that since laws are universal they must be altered to apply to individual cases. As a result there is need for a king to be a medium between the natural and positive law through the exercise of his reason. He observes that if the name of a king, *rex*, is properly applied, it behooves him to rule others and follow right reason by pursuit of the natural law. A king rules rightly only insofar as he does not deviate from the natural law.[30]

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[28] *Ibid*., p. 528.

[29] *Ibid*., iii, 2, 29, pp. 531-32.

But Egidius suddenly enunciates a startling principle: "However, *he* (the king) is *above positive law*, because he has established it by his own authority."[31] After another reference to the need for the king to depend on natural law and right reason, Egidius returns to his unusual theory regarding positive law. "*Positive law* is *beneath the ruler*, just as *natural law* is *above* (*him*)."[32]

Applying his theory to the question of whether it is better to be ruled by the best kind of law or the best kind of king, Egidius begins his discussion with a distinction. If one is speaking of natural law, it is clear that this form of law is superior to the king himself. However, if one is speaking of positive law, it is better to be ruled by a just king. Especially is this true in instances where the law is concerned with universal application, but reason prescribes a particular application which law cannot foresee since it is incapable of determining particular situations.[33]

However valid his qualified explanation, Egidius' principle that the king is beneath the natural law but above positive law is a complete contradiction of Bracton's principles and almost all medieval political theory. Traditionally it had been held that the king was the servant, not the master of the law. To Egidius' unique belief may be traced the theory of absolute monarchy which was to develop in the sixteenth and seventeenth century.[34]

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[30] *Ibid*., p. 532.

[31] *Ibid*., pp. 532-33: "Est tamen supra legem positivam, quia illam sua auctoritate constituit." (Italics mine.)

[32] *Ibid*., p. 533: "Positiva lex est infra principantem, sicut lex naturalis est supra." (Italics mine.)

[33] *Ibid*., p. 533.

For Egidius, then, the monarch is a living law. He quotes from Aristotle (_Ethics_, Bk. v) that if law is a measure or rule of action, then the judge himself, and especially the king, to whom belongs the power to establish law, ought to be a measure in ruling.[35] Here is his explanation.

> Truly a king or a prince is a certain law, and law is a certain king or prince. For _law_ is a certain _inanimate prince_; a _prince_ is truly a certain _living law_. Therefore, inasmuch as the living is above the inanimate, so the king or prince ought to be _above_ the law.[36]

Egidius continues as follows. To doubt whether a king should be just or equal is to cast doubt upon a rule being a means of measurement; for if a rule lacks equality, nothing can be regulated since all things are regulated through a norm.[37] An unjust ruler is not worthy to be king. Since it is proper that a measure be correct and equal, the king, because he is an animated law and a certain animated rule of action, ought especially, in view of his royal personage, strive to preserve justice.[38]

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[34] Carlyle, _op_. _cit_., V, pp. 75-76.

[35] Colonna, _De_ _req_. _prin_., _op_. _cit_., i,2, 12, p. 79.

[36] _Ibid_.: "Est enim rex sive princeps quadam lex, et lex is quidam rex sive princeps. Nam lex is quidam inanimatus princeps; princeps vero est quadam animata lex. Quantum ergo animatum inanimatum superat, tantum rex sive princeps debet superare legem." (Italics mine.)

One may be known to rule himself, but others may still be doubtful of his virtue; let him be placed in a ruling position where his works must extend beyond himself and it will soon be evident what qualities he possesses. From Aristotle (Ethics, Book v) Egidius quotes a maxim to the effect that a ruling position reveals the man. Here is where he may practice justice. It is from this justice, because it is directed to others, that perfect goodness arises. This perfection in goodness should motivate the justice practiced by every king or ruler.[39]

It is difficult to assess the full significance of Egidius' doctrine that the king is, in effect, the living positive law, and as its source and exemplification, is above its restrictions. It seems apparent that his unusual stress on the monarch's following the natural law, precluded, in Egidius' own mind, the arbitrary and capricious exercise of royal power. Yet, the principle was dangerous. Politically, as noted, it was foreign to normal medieval thought. It lent itself to absolute monarchy and contributed to that royal absolutism which was to emerge several centuries later.[40] As such, it was a movement in the direction of modern sovereignty, although the weight of evidence seems to indicate this was not the author's intention.

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[37] Ibid., pp. 79-80.

[38] Ibid., p. 80.

[39] Ibid., pp. 81-82.

Despite his prominence as author of the De regimine principum, Egidius Colonna is probably remembered far more for his espousal of ecclesiastical than temporal sovereignty. The extravagence of this latter claim, as will be shown, was destined to insure him a niche in the history of political thought.

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[40] It should be mentioned that Egidius does allude to authority being exercised with the "consent of men" in a later work, De renuntiatione Papae, written around 1297, and concerned with the resignation of Pope Celestine in 1294. Here he states that men endowed with superior wisdom should rule those less gifted. "It is fitting, however, that this be accomplished with the consent of men. And just as it is accomplished and made a reality through the consent of men that one may rule others, so through the consent of men, in a contrary situation, it can come about that a ruler may resign, or that he may even be deposed."- De renuntiatione Papae (Rome: Antonius Bladus excudebat, 1590), xvi, 1,c, p. 22. Latin text: "Oportet tamen quod hoc compleatur per consensum hominum. Et sicut per consensum hominum perficitur et completur, ut quis allis praeficiatur, sic per consensum hominum contrario modo factum fieri potest, quod Praefectus cedat, vel quod etiam deponatur." (Translation and italics mine.)

Egidius provides no further explanation or elaboration of the method used in expressing this consent.

Claim for Pre-eminence of Church Authority

Spiritual Power Rightfully Ordered to Control Temporal

In the *De ecclesiastica potestate* Egidius presented what has come to be known as the theocratic or hierocratic doctrine of Church and state. Its basic thesis maintains that all temporal authority is derived from and belongs *de jure* to the Pope.[41] Its year of publication, 1301, is the same as Pope Boniface VIII's bull, *Ausculta fili*, and one year before the latter's renowned *Unam sanctam*.[42] In fact, the similarity of thought between the *De ecclesiastica potestate* and *Unam sanctam* reveals the intimacy between the two men and the possible influence of the earlier work on the latter.[43] Egidius contends the higher spiritual order should direct the temporal.

One of his earliest arguments is predicated on this appeal to order. He is countering opponents who contend that secular princes should be subject to the Church only in spiritual, not temporal matters. One might answer, says Egidius, that the Church enjoys temporal rights from the actual conferral of Constantine, but this historical argument lacks complete cogency.[44] He prefers to argue along the following lines.

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[41] Charles N. R. McCoy, *The Structure of Political Thought* (New York: McGraw-Hill Book Company, 1963), p. 123.

[42] Carlyle, *op. cit.*, V, p. 402.

[43] Sabine, *op. cit.*, p. 274.

[44] Egidius Colonna (Aegidius Romanus), *De ecclesi-*

> For if kings and princes were only spiritually subject to the Church, there would not be a sword beneath a sword, there would not be temporal matters beneath spiritual concerns, there would not be order in these powers, the lowest would not be ranked under the highest through intermediate levels.[45]

Nature provides us the best exemplar of this kind of subordination, he continues. In the universe, spiritual substances rule the corporeal. The heavens themselves, highest of all corporeal bodies and controllers over all bodies, are regulated by spiritual substances acting as moving intelligences. This being so, all temporal lords and all earthly power throughout Christendom ought to be ruled by spiritual and ecclesiastical authority and especially by the Pope, who occupies the highest spiritual rank in the Church.[46]

On the basis of true order the spiritual power has the right both to establish the earthly power and to sit in judgment upon its worthiness. From Hugo of St. Victor

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astica potestate, herausgegeben von Richard Scholz (Weimar: Hermann B. Nachfolger, 1929), i,4, p. 13. (This is the Latin edition from which all citations will be made. Since there are no English translations of this work, all translations are my own.)

[45] Ibid.: "Nam si solum spiritualiter reges et principes subessent ecclesie, non esset gladius sub gladio, non essent temporalia sub spiritualibus, non esset ordo in potestatibus, non reducerentur infima in suprema per media."

[46] Ibid., i,5, p. 17.

and the prophet Jeremias, Egidius quotes passages empowering the Church to plant or root up. The power to plant he interprets as the authority to establish earthly power; to root up is the authority to pass judgment on the state's integrity.[47]

In reference to the popular two-sword concept of authority, Egidius asserts that if things be ordered it is proper that the temporal sword be subject to the spiritual; proper, further, that kingdoms exist under the Vicar of Christ. He admits, de facto, some rulers act to the contrary;[48] but de jure, "it is proper that the Vicar of Christ have dominion over these temporal things themselves..."[49]

Egidius will return later to a greater amplification of his two-sword theory, but now sets about proving that royal power is actually established through the priesthood. Again, he employs the argument based on subordination. Every royal power, he insists, should recognize that unless it has been established with God's consent through the priesthood it is not rightful; it is more a band of robbers. Egidius concludes that any existing kingdom not established through the priesthood cannot consider itself a kingdom until it link itself with the priesthood.[50]

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[47] Ibid., i,4, p. 12

[48] Ibid., p. 13.

[49] Ibid.: "Oportet Christi vicarium super ipsis temporalibus habere dominium..."

An additional argument is adduced to prove the temporal is beneath the spiritual. Our final end is happiness and this is found in spiritual, not material things, for according to Aristotle, whatever is a good is either a good in itself, or ordained to a further end. Now, obviously, temporal things are not ends in themselves. Thus, if our happiness be not posited in temporal, but in spiritual things, then temporals are goods only insofar as they are ordained to the spiritual realm. On the basis, then, of the lower temporal goods being ordained to the higher spiritual order, the imperfect to the higher perfect, Egidius concludes that all temporal things, *de jure*, if not *de facto*, are subject to the Supreme Pontiff.[51]

The two-sword concept once more claims the attention of Egidius. He begins this section by asserting that royal power would not be established under Church power unless the temporal things, over which royal power presides, were established under the power of the Pope. Scriptural warrant is employed (Luke 22:38) to prove that Christ, on one occasion, in giving two swords to his disciples was, in effect, conferring upon their successors in the Church authority over both the spiritual and temporal realms.[52] For "the eccle**s**siastical power holds each sword....the spiritual for its use, the material at its discretion."[53]

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[50] *Ibid.*, i,5, p. 15.

[51] *Ibid.*, ii,4, pp. 48-54.

Scripture provides further proof of the Church's two-fold jurisdiction. On the occasion when Christ established Peter as His Vicar, our Lord spoke of having been given all power in Heaven and on earth. At this moment, says Egidius, Peter and the Church received the maximum of authority. Thus, the Church holds both swords from Peter, who possessed both the earthly and the spiritual keys. Actually, there is no power contained in the material sword that is not found in the spiritual, except that the material sword may exercise the judgment of blood, a duty not befitting the dignity of the Church's role. The conclusion, then, of learned men is that Christ committed both keys and both swords to the Church. From this conferral it may be further concluded that the universal rule of the Church covers both temporal and spiritual concerns.[54]

Satisfied in his own mind that the Church possesses both swords, Egidius proceeds to argue that the Church would not possess both swords unless the earthly princes enjoying the use of the material sword were in the service of the Church. And if earthly princes are in the service of the Church, it follows logically that temporal things, over which the earthly power holds sway, are thereby established under the dominion of the Church.[55]

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[52] Ibid., ii,5, p. 56.

[53] Ibid.: "...potestas ecclesiastica habet utrumque gladium...spiritualem ad usum, materialem ad nutum."

[54] Ibid., ii,14, pp. 132-33.

Employing arguments drawn from natural subordination, from the spiritual being superior to the temporal, and from Scripture, Egidius has concluded that the Church rightfully possesses universal dominion in the temporal and spiritual domains. The clash of universal ecclesiastical dominion with individual human dominion was inevitable. Hence, it became his task to explain the practical implications and complete justification of his grandiose claim.

Universal Dominion of Church Embracing Human Dominion

The key to understanding Egidius' concept of universal ecclesiastical dominion lies in his insistence that all dominion must be predicated upon justice. Now the only dominion with justice, regardless of whether it be extended over lay persons or temporal things, is that established under and through the Church. For this reason, he contends all organs of power, temporal things, military arms, constitutions, and laws must be established according to Church canons and are to be directed to the service and jurisdiction of the Church.[56]

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[55] *Ibid*., ii,5, p. 57.

To the objection that one inherits dominion over material possessions from his father, not the Church, Egidius has a ready - and ingenious - response. It involves a key principle frequently employed in the development of his political theory. To hold dominion, he contends, it is not enough to be generated by flesh; one must be regenerated spiritually through the Church.[57] These are his words:

> So this man who has been generated from a carnal father, unless he has been generated through the Church, is unable to succeed justly to his paternal inheritance, nor would he be able to obtain with justice dominion over his father's possessions.[58]

Regeneration through the Church is more complete and more perfect than human generation, hence, ecclesiastical regeneration is superior to the latter. In addition, this spiritual regeneration involves a richer and more universal form of justice than corporeal generation, which necessarily involves limitation or lack.[59]

By way of emphasizing the universality of this just form of dominion, Egidius observes that a man could not justly own a field, a vineyard, or anything whatsoever unless he held it under and through the Church.[60]

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[56] _Ibid._, ii,7, p. 70.

[57] _Ibid._

[58] _Ibid._: "Ut hic homo qui est a patre carnali generatus, nisi sit per ecclesiam regeneratus, in hereditatem paternam non potest cum justicia subcedere nec dominium rerum paternum poterit cum justicia obtinere."

[59] _Ibid._, pp. 70-71.

How does Egidius support this extravagent claim for Church dominion? From the De civitate Dei, Ch. XXII, of St. Augustine, he quotes the former as holding that there can be no true justice unless it be in a republic where Christ is founder and ruler. Also, that after the passion of Christ, there could be no true republic in which the Church was not revered or Christ not acknowledged as founder and ruler.[61] From this teaching Egidius infers that all dominion ultimately derives from the Church, the source of justification instituted by Christ Himself.

The Church, then, is the mother and mistress of all possessions, of all temporal things. But, Egidius hastens to add, this claim does not consist in depriving the faithful of their possessions. It is a matter of the Church possessing dominion of one kind, the faithful of another. The Church has universal and superior dominion; the faithful have particular and inferior dominion. In this sense the Church does render to Caesar the things that are Caesar's.[62] Later, on the score of the two types of dominion, he points out that the particular is always contained under the universal. This being true, he says, it seems to have been demonstrated that the Church enjoys superior dominion, others inferior.[63]

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[60] Ibid., p. 73.

[61] Ibid.

[62] Ibid., p. 75.

Egidius now explains the concept of regeneration and its relationships to dominion. Every man has been deprived of his eternal inheritance by Original Sin and also by his actual sins. But man's unworthiness extends even further; he is unworthy to exercise ownership even in the field of temporal things unless he is subject to God. One not subject to God loses justly and possesses unjustly all which he has from God.[64] Only through the Church can he be regenerated and enjoy just dominion. Thus, observes Egidius, not from his carnal father does a ruler or a member of the faithful hold his power and his inheritance, but ..."he ought rather to say he possess this kind of rulership and inheritance from his mother the Church, through whom he is spiritually regenerated and sacramentally absolved."[65]

Having established the Church as holding ultimate dominion over all possessions, Egidius turns to the subject of excommunication. A person so punished may justly be deprived of his goods. He also loses all rights, legal and otherwise, since these rights were based on communication with the faithful, an association now denied him.[66]

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[63] Ibid., ii,12, p. 101.

[64] Ibid., ii,8, p. 77.

[65] Ibid., p. 79: "...magis debet dicere se habere huiusmodi principatum et hereditatem a sua matre ecclesia, per quam est regeneratus spiritualiter et absolutus sacramentaliter."

One becoming an infidel suffers a similar fate. He, too, may be rightfully deprived of all his possessions, since he is now unworthy to exercise possession or ownership.[67]

In the view of Egidius, then, those excommunicated may rightfully be deprived of their possessions. The fact that the Church does not move immediately to dispossess them in every instance is attributable to its kindness and consideration. The Church, seeking to imitate God the Father, does not always punish sinners, but instead seeks to forgive them.[68]

In a section in which he deals specifically with the origin of a ruler's power, Egidius again emphasizes that no one can justly hold any power or justly be master of any possession unless through the Church, because through her one is spiritually generated and sacramentally absolved.[69] Again, he asserts that a temporal master is a son of wrath by both original and actual sin. In this condition, turned away from God and divine dominion, he lacks justice and, as such, can own nothing. Regenerated through the Church, he becomes a just owner. Since he is rendered a just master through the Church, it follows that those possessions are under the sway of that Church from whom he received his just dominion.[70]

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[66] _Ibid._, ii,12. p. 104.

[67] _Ibid._, p. 106.

[68] _Ibid._

[69] _Ibid._, iii,3, p. 158. Cf. iii,11, p. 202.

This ultimate claim for ecclesiastical sovereignty is made even more explicit as Egidius explains in detail the difference between the Church's dominion as opposed to Caesar's. Caesar's dominion may be either *dominium utile* or *dominium potestativum*. *Dominium utile* consists of advantages and profits derived from possessions; *dominium potestativum* consists in the exercise of justice and the judgment of blood. But this dominion which Caesar or any temporal master possesses detracts in no way from the Church's lordship, which is always superior and primary.[71]

In fact, the Church exercises in temporal things a *jus utile* and a *jus potestativum* which is superior to and more excellent than Caesar's. The same is true of the Church's *dominium* in this respect. The Church is superior since it can transfer Caesar's dominion to another and because Caesar's material sword must be employed at the inclination of the Church and for her benefit.[72]

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[70] *Ibid*., iii,11, p. 202.

[71] *Ibid*., p. 203.

[72] *Ibid*., pp. 204-05.

To evaluate the validity of this claim to universal ecclesiastical sovereignty it is necessary to examine the pivotal source of Egidius' conclusions. His reference to St. Augustine's statement that there can be no true justice in a community where Christ is not revered as founder and ruler was calculated to prove that all just ownership and power must stem from regeneration in the Church. Carlyle believes Egidius is here guilty of a gross misinterpretation of Augustine. The latter is not contending there were no commonwealths among the pagans but only that the conception of justice must be omitted from the definition of the state, a conception that was almost universally rejected by medieval thinkers.[73]

Moreover, for Egidius to hold that no one can hold any power or justly be lord of anything save by regeneration through the Church violates his concept of the state established in his earlier work, the De regimine principum. It should certainly be noted that this theory is a flat contradiction of the teachings of both St. Thomas Aquinas and Pope Innocent IV. As has been pointed out, both held that infidels could justly hold property and exercise jurisdiction. These latter rights were established by human law arising from natural reason; they were not effaced by divine law, which distinguishes between believer and unbeliever.[74]

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[73] Op. cit., V, pp. 405-06.

The supreme sovereignty Egidius deposits in the Church is grounded ultimately in the Supreme Pontiff. For the papal domain he reserves almost unlimited dominion, as the following detailed account will indicate.

Plenitudo Potestatis Grounded in the Papacy

Previous citations have indicated that throughout the *De ecclesiastica potestate* Egidius' aim has been to explain how all spiritual and temporal powers come to reside ultimately in the Pope. Following his customary principle of subordination, he contends that if spiritual powers are superior to the secular, then the Pope, as head of the spiritual, is most sublime and all ought to be subject to him. The reasoning is the same as that employed in demonstrating that the soul is more excellent than the body.[75]

In that section of his work in which he treats of the exercise of the material sword, Egidius explicitly states that this sword derives its power from the Pope since every power in the Church Militant is eventually derived from him.[76]

Just as in the governing of the world there is one fountain or source, namely, God, from whom all powers stem, so in the Church there is one source, the Pope. By common law the Vicar of Christ is the fountain that irrigates, conserves, and protects all. He is the true source since all principalities, secular and ecclesiastical, are eventually derived from him.[77]

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[74] *Ibid.*, pp. 404-05.

[75] Colonna, *De eccles. potestat.*, *op. cit.*, i,3, pp. 9-11.

[76] *Ibid.*, iii,3, p. 158.

Egidius next directs his attention to the unique manner in which the papal power should operate. Just as God follows the general rules of nature in permitting things to act according to their specific powers, so the Vicar of Christ should allow the temporal powers to exert their proper office. However, in specific instances or matters of serious import, the spiritual power is permitted to act beyond common law and exercise jurisdiction in temporal matters.[78]

From Chapter XXI of St. Augustine's *De vera religione*, Egidius quotes the former as saying that a judge should issue decrees according to the law, not pass a judgment on the law itself. This may be true in most cases, admits Egidius, but it is the right of the founder of a law to judge not only *according to* the law, but *of* the law itself. This relaxation of law belongs to the Pope, and the Church may exercise temporal jurisdiction because she possesses the plenitudo potestatis. This power would obtain in the following cases: first, those which are not covered by law; second, those in which, because of certain causes, laws are not to be obeyed; third, those in which it would be difficult to obey the law; and fourth, those in which the law is ambiguous.[79]

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[77] *Ibid*., iii,2, p. 152.

[78] *Ibid*., iii,4, p. 166.

In answer to the inevitable question of whether the Pope is bound by the law, Egidius has this explanation.

> For although it is permissible for the Supreme Priest to be an animal without a halter and bridle and be a man above positive laws, nevertheless, he ought to impose a bridle and a halter upon himself and live according to established laws, and unless cases arise and certain causes demand it, he ought to observe established laws.[80]

To explain adequately his exalted view of the papal plenitudo potestatis, Egidius resorts to hyperbole. The greatness of God consists in the fact that He can operate without employing a secondary cause, e.g., the creating of man out of nothing. The Pope's fullness of power is also evidenced by his being able to act without employing a secondary cause. As an example, Egidius notes that the Pope can directly elevate a person to the episcopacy without following the normal procedure of allowing a chapter of religious to elect their own prelate. The Pope, in this instance, would not have to follow a prescribed formula since he possesses the fullness of power.[81] So extensive is this *plenitudo potestatis*, states Egidius, that any potency or power which could conceivably become actualized is embraced within the authority of the Supreme Pontiff.[82]

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[79] Ibid., iii,8, p. 189. (Italics mine.)

[80] Ibid., p. 190: "Nam licet summus sacerdos sit animal sine capistro et freno et sit homo supra positivas leges, ipse tamen debet sibi imponere capistrum et frenum et vivere secundum conditas leges, et nisi casus emergant et certe cause requirant, debet observare conditas leges."

In the closing pages of the *De ecclesiastica potestate*, Egidius never tires of stressing the previous analogy between the power of God and the Pope, as well as the capacity for both to operate beyond given laws. He comments, in the same vein as before, that the Pope as imitator of God, should rule the Church according to accustomed order, "however, when a reasonable cause arises, he possesses such free power that he may act beyond these laws and beyond this accustomed course."[83]

This unique papal power is explained further. Egidius asserts that the heavens may not be able to produce a miracle, because a miracle is beyond nature's laws, and the heavens must follow the laws accorded them by nature. However, to the Pope belongs the power to establish and promulgate laws for all ecclesiastical personnel and the entire Church; for this reason the Pontiff is above laws of this type, and since the fullness of power resides in him, he is able to act beyond the law.[84]

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[81] *Ibid.*, iii,9, pp. 190-92.

[82] *Ibid.*, p. 193.

[83] *Ibid.*, p. 194: "...causa tamen racionabili emergente liberam habet potestatem, ut faciat preter has leges et preter hunc solitum cursum."

Continuing along similar lines, Egidius speaks of God endowing the things of nature with their natural laws, e.g., conferring on fire the power to burn. However, he notes, the fullness of God's power consists in that He could assign to fire the power to become frigid since He is capable of acting beyond such laws. In like manner, the Supreme Pontiff issues positive moral laws to nations or to men, nonetheless, the _plenitudo potestatis_ rests with him inasmuch as he is able to act beyond laws of this type.[85]

In one final burst of praise Egidius compares the pontifical power with the perfection of heaven. Heaven, as regards its being, is complete as to form and perfection. This being true, its form satisfies the total material appetite so completely that matter cannot possess a further perfection or form. Such, too, is the power of the Pope. For, in speaking of the power of government in this life, so great is the perfection of papal power that no further capacity for rule or governance is equal to it.[86]

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[84] _Ibid_., p. 195.

[85] _Ibid_.

[86] _Ibid_., iii,10, p. 196.

In evaluating Egidius' view of papal plenitude, one may safely say that no concept of sovereignty could be higher or more extensive. The difference between his theory of papal power and that envisioned in the Gelasian concept is almost incalcuable. In a word, it threatened the state with complete absorption by the Church.

As Dr. McCoy points out, the basic defect of Egidius' doctrine is the subjection of a hierarchy of ends to a Christian republic viewed as a simple unity under the Pope's hegemony. In the case of any whole that has a simple unity the parts have no function independently of the function of the whole. Since Egidius was applying a theory of simple unity to a political whole which was, in reality, a mere unity of order, he was, in effect, dissolving the parts of this political whole. His theory, in practice, would dissolve the whole political society in much the same way as Plato's "simple unity" implied the destruction of the family. The view of St. Thomas, that the Pope exercises his temporal power only indirectly, is a far more reasonable and tenable political doctrine.[87]

Professor McIlwain, while not approving of Egidius' conclusions, ranks him among the greatest of political theorists of the later middle ages. At least, Egidius had undertaken to substantiate papal plenitude on a philosophical basis. But this same authority notes that many of the clergy rebelled at Egidius' conclusions and pressed for the constitutional theories advocated later at the Councils of Constance and Basel.[88]

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[87] The Structure of Political Thought, op. cit., p. 123.

To discover the similarity of thought between Egidius' contribution and that of Pope Boniface VIII's bull, *Unam sanctam*, is to grasp the full significance of the former's importance in the ranks of those favoring papal plenitude. Since no treatment of medieval sovereignty could overlook the significance of this momentuous papal document, it properly becomes the next consideration of this treatise.

Extreme Papal Claim of Pope Boniface VIII

The memorable bull, *Unam sanctam*, was issued by Pope Boniface VIII on November 18, 1302. Its relevance to the medieval concept of sovereignty cannot be too highly stressed since it embodies the legal position of papal plenitude as it crystallized in the thirteenth century. The bull's issuance was occasioned by the bitter controversy between Boniface and the French King, Philip the Fair. Philip's attempt to tax the French clergy without papal sanction had instigated the original dispute.

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[88] *Op. cit.*, pp. 257-59.

As it happened, this bull actually brought to a climax the Church-state conflict that began with Pope Gregory VII in the eleventh century. Its contents provide an excellent summary of Church ideology at the height of the feudal middle ages.[89]

Boniface begins the bull by asserting the need for one Holy, Catholic and Apostolic Church. Noah symbolized the unity of leadership at the time of the flood and Christ was emphasizing the same concept when He commanded Peter to feed His sheep. And by "sheep" Christ meant all men, for He asserts later that there will be one fold and one shepherd.

Boniface now explains the two-sword concept of authority in much the same terms as John of Salisbury and Egidius Colonna. When our Lord accepted the two swords from His Apostles, He signified that the power of both resided in the Church. The spiritual was to be exercised by the Church; the material to be employed by kings and knights at the sufferance of the priest. Proper ordination demands that one be under the other, and this order would be violated if the temporal sword were not subject to the spiritual; if the inferior were not beneath the superior. Divine Law demands that the lowest be led through the intermediate to the highest. Furthermore, the law of the universe also directs the lowest through the intermediate, the inferior through the superior. Accordingly it must be confessed, contends Boniface, that the spiritual power exceeds the earthly in dignity, just as spiritual things excel temporal ones.[90]

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[89] Ehler and Morrall, _op_. _cit_., pp. 89-90.

One is reminded of Innocent III's earlier claim to judge the temporal realm in matters of sin as Boniface next observes, "For the truth bearing witness, the spiritual power has to establish the earthly, and to judge it, if it be not good."[91]

Should an earthly power err, it shall be judged by the spiritual power. If a lesser spiritual power err, it is to be judged by a higher spiritual power; however, should the supreme spiritual power err, it is to be judged solely by God, not man. This supreme spiritual power, though given to man and exercised by man, is really not human, but rather divine. Whoever resists this power, resists God. Boniface ends this famous bull by solemnly declaring that it is absolutely necessary for salvation that every human creature be subject to the Supreme Pontiff.[92]

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[90] *Unam sanctam*, found in Ehler and Morrall, *ibid*., pp. 90-91.

[91] *Ibid*., p. 92: "nam, veritate testante, spiritualis potestas terrenam potestatem instituere habet, et judicare, si bona non fuerit." (Latin version from *Corpus juris canonici* (Extravag. Commun., lib. I, tit. VIII, "De maioritate et obedientia," cap. I) ed. Friedberg, *op. cit*., Vol. II, p. 1246.

The controversy engendered by Unam sanctam has been endless. McIlwain, while calling it the most influential document of the middle ages, does not think its claims exceed those of Innocent III; nor does he believe the bull contains an explicit papal claim to direct power in temporal matters.[93] Another authority sees Unam sanctam's importance as residing in the fact that it formed into law what had previously been a theory, namely, that the non-recognition of the temporal power of the Pope by secular princes was a mortal sin and a threat to salvation.[94]

Of particular interest is Luigi Sturzo's concise analysis of this document. Admitting its lasting fame, he points out that the only dogmatic portion is the conclusion, in which Boniface asserts that every human being must be subject to the Pope to achieve salvation. In that respect the work was traditional. However, its theological and political statements were so intertwined it seemed to imply an absolute subjection of the secular power to the papal. In content Unam sanctam's claims did not extend beyond the teachings of the previous two centuries and were not as strongly-worded as those of Innocent IV.[95] But the tenor of Boniface's time was different from that in which Innocent wrote "and the solemnity of the bull with its dogmatic conclusion gave a tone of definition to Boniface's teaching which was lacking in the polemical letters of the Popes to the emperors."[96]

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[92] Ehler and Morrall, op. cit., p. 92.

[93] Op. cit., pp. 245-46.

[94] Walter Ullmann, Medieval Papalism (London: Methuen & Co., Ltd., 1949), p. 93.

This document can be said to mark the end of an era and a dream. Scarcely a year later, in 1303, the dream of universal papal dominion unifying Christendom ended with the tragic death of Boniface at Anagni.[97]

This chapter has undertaken to demonstrate how the political writings of Egidius Colonna contributed to the medieval concept of sovereignty in both the secular and the ecclesiastical sphere. In the realm of the state his concept of political development relied heavily on Aristotle, yet he defended a marked preference for monarchy and introduced a novel concept of authority which placed the king beyond the pale of positive law. In the ecclesiastical realm, he argued from spiritual superiority and the necessity for regeneration through the Church to an unprecedented claim of absolute papal sovereignty over both spiritual and secular domains. These latter doctrines were seen as influencing the papal edict which marked the zenith in claims for ecclesiastical plenitude.

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[95] _Op. cit_., p. 118.

[96] _Ibid_.

[97] _Ibid_., p. 124.

That there should be a reaction to these extreme papal claims was not unexpected. Extreme, reactionary, in fact, often vitriolic,the opposing views were probably best represented in a treatise entitled, *Defensor pacis*, by Marsilius of Padua. This work fittingly becomes the subject of our concluding chapter on the medieval concept of sovereignty.

CHAPTER V

VIEW OF STATE SOVEREIGNTY SUBORDINATING CHURCH

Political Doctrines of Marsilius of Padua

Origin and Purpose of the State

The *Defensor pacis*, considered one of the most celebrated anti-papal political treatises of the middle ages, was completed and presented to the Emperor Ludwig of Bavaria (Louis IV) in the year 1324.

Although its authorship is generally attributed to Marsilius of Padua, it is believed that John of Jandun collaborated with him in executing the work.[1]

The *Defensor* is divided into three sections or discourses. It is the opinion of Professor McIlwain that John, a Frenchman, wrote the first part; its treatment of the state and its formation is highly Aristotelian in content and logically points to John, an Aristotelian scholar and commentator, as its author. Marsilius, according to McIlwain probably wrote the second discourse, a portion dealing with the Church-state problem, as well as the third discourse, which approximates a summary and conclusion of the two previous sections. Marsilius, an Italian, was neither versed nor deeply interested in the philosophical contributions of Aristotle.[2] Since the question of specific authorship is a moot point, this treatise in all future references will assume for purposes of handy reference that the entire work mirrors the thought of Marsilius.

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[1] J. W. Allen, "Marsilio of Padua and Mediaeval Secularism," *The Social and Political Ideas of Some Great Mediaeval Thinkers*. ed. F.J.C. Hearnshaw (New York: Henry Holt and Company, 1923), pp. 167 and 170.

A short biographical sketch of these two figures will provide some index to their concept of sovereignty within the state and Church. Marsilius, an Italian, was born in Padua in 1270. As a young man he became embroiled in the bitter sectional strife between his native city and Milan. In these internecine political struggles he was to develop an implacable hatred not only for the papacy, but for all clergymen. His travels were extensive, and eventually led him to the University of Paris; this distinguished medieval institution he was later to serve as rector. He was still residing at the university in 1310, during the posthumous trial of Pope Boniface VIII, an aftermath of the violent feeling engendered by that Pontiff's bid for papal plenitude.

At the same university Marsilius made the acquaintance of John of Jandun, then serving the school as a canon. The university was a hotbed of Averroism, and John certainly seems to have been influenced by this doctrine. In addition, Marsilius and John were friends of Siger of Brabant, a leading Averroist. Proof that both of the former undoubtedly shared the authorship of the Defensor lies in the fact that both were damned as heretics by a papal decree issued in 1327. Professor Allen actually doubts that either was a Christian.[3]

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[2] *Op. cit.*, pp. 297-99.

Later Marsilius was to accompany his protector, Ludwig of Bavaria, on the latter's invasion of Italy. On this expedition he was rewarded for espousing the secular cause over the clerical by being named Imperial Vicar of Rome. In this role he achieved notoriety by his incessant harassment of the clergy and his frequent displays of cruelty. John of Jandun also received compensation from the imperial power. He was appointed Bishop of Ferrata but never lived to enjoy the fruits of his labor; he died on the way to his see. When Emperor Ludwig was forced to quit Rome and return to Germany, Marsilius accompanied him and vanishes from the scene after 1342.[4]

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[3] Op. cit., pp. 170-71; cf. also Etienne Gilson, The Philosophy of St. Thomas Aquinas, trans. Edward Bullough and ed. G. A. Elrington (2d. ed. rev. and enlg.; St. Louis: B. Herder Book Company, 1929), pp. 13-16. This work contains an excellent account of the secularizing influences of Averroism at this institution.

[4] Ibid., pp. 189-91.

The heavy reliance of the Defensor upon Aristotle is evident from its opening pages. In fact, the title Marsilius selects for his work is consistent with an early observation that a state ordered by reason and tranquillity is the best disposed of healthy states.[5] From Aristotle's Politics, Bk. 1, Ch. 1, Marsilius traces the development of the state from the family through the village, noting that reason guides men eventually to the establishment of the state, a perfect community.[6] The final cause of the state he also derives from Aristotle's Politics, Bk. 1, Ch., 1, and this consists in erecting the state not just for living, but for living well.[7]

On the score of living well Marsilius now makes a distinction that vitally affects the remainder of his work. Living well affects two areas: the temporal and the eternal, and consequently, involves two ends. Philosophers were able to comprehend and prove by demonstration the worldly end of man, not so the spiritual; the latter could be known only through faith.[8] The importance of this division will shortly be apparent.

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[5] Marsilius of Padua, The Defender of Peace, trans. with an introduction by Alan Gewirth, Vol. II: The Defensor pacis (2 vols; New York: Columbia University Press, 1956), i,2,3, p. 9. The foregoing version will be employed for all English citations in this treatise. Latin references will be cited from the Defensor pacis of Marsilius of Padua, ed. C. W. Previte-Orton (Cambridge: in universitatis typographeo, 1928).

[6] Ibid., i,3,3, p. 10 and i,3,5, pp. 11 and 12.

[7] Ibid., i,4,1, p. 12.

The Marsilian notion of sovereignty begins to emerge as he next posits a need for every state to have a guardian. It is the responsibility of this guardian to settle quarrels and establish justice with the assistance of the men of the community. But in addition to needing a guardian who will preserve peace and punish wrongdoers, the state also requires and must designate a group of individuals who will teach the citizens the truths of supernatural revelation.[9]

Still in the Aristotelian vein, Marsilius continues with his concept of the state's development and end. Men assemble to secure a sufficient life and this assembly, perfected and self-sufficient, is called the state.[10] From the Politics, Bk. VII, Ch. 8, he repeats the six component classes of the state: (1) the agricultural, (2) artisan, (3) military, (4) financial, (5) sacerdotal, and (6) judicial or deliberative.[11] Of extreme importance is this last class, for the judicial or ruling group must discharge the function of regulating justice and the common benefit.[12]

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[8] Ibid., i,4,3, p. 13 and i,9,2, p. 29.

[9] Ibid., i,4,4, pp. 13-14.

[10] Ibid., i,4,5, p. 14.

[11] Ibid., i,5,1, p. 15.

For a brief period Marsilius is diverted from his main theme of establishing sovereignty within the state as he directs his attention to a class whose prerogatives will be his chief concern in the second and third discourses of the _Defensor_. This is the priestly class in its function of directing religious practices. Religious truths, he observes could not be proved by demonstration, but all nations have agreed it was necessary to lay down religious laws for the benefit of this life and the next. Leaders such as Hesiod and Pythagoras envisioned the need of religion to insure peace even in this life. Too sophisticated to believe in another world where rewards and punishments were assigned, they nonetheless feigned such accounts to control the wicked and deter wrongdoers.[13]

While assigning a superstitious basis to primitive religions, Marsilius views Christianity in a different light. The difference between Christianity and the gentile creeds, he asserts, consists in our knowing that the Christian religion and priesthood are authentic and that the sacerdotal role in the state is a necessary one.[14]

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[12] _Ibid_., i,5,7, pp. 17-18.

[13] _Ibid_., i,5,10 and 11, pp. 18-20.

[14] _Ibid_., i,5,14, p. 20.

Drawing from the Augustinian concept, Marsilius undertakes to explain the necessity for the priesthood. He begins by observing that had man not fallen by original sin there would have been no necessity for establishing or differentiating any civil offices within the state. But man did fall, and God in his mercy established counsels and commands whereby man might atone and be directed to eternal happiness. This revelation, however, is incapable of being proved by human reason.[15] It becomes the end of the Christian priesthood to disseminate the truths of this revelation: to teach men what they must do or omit to secure eternal salvation.[16] In brief, the final cause of the priesthood is nothing more than the preaching of the divine laws and the administration of the sacraments.[17]

The role of the priesthood established, Marsilius now returns to his concept of political structure, which will eventually posit the legislator as sovereign. In an Aristotelian mode he must establish the material, formal and efficient causes of government. The material cause consists of men executing their various offices; the formal cause becomes the habits or commands of the state's efficient cause; and this efficient cause is nothing other than the human legislator.[18]

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[15] *Ibid*., i,6,1-4, pp. 21-23.

[16] *Ibid*., i,6,8, p. 23.

[17] *Ibid*., i,6,10, p. 24.

Following Aristotle's Politics, Bk. III, Ch. 5, he agrees that a well-tempered government is one that rules for the common good in accordance with the consent of its subjects; a vicious form of government ignores these prerequisites. Marsilius thus encounters no difficulty in agreeing that the three approved forms of government are monarchy, aristocracy and polity; the corrupted are tyranny, oligarchy and democracy.[19]

Faithful to the medieval tradition Marsilius does not reject monarchy, but he notes that it is superior insofar as it rules over voluntary subjects for the common good; it approaches tyranny as it deviates from this mode. Elective, rather than hereditary, monarchy is more calculated to insure these requirements, for it produces the person best qualified to reign.[20] Temperate governments, he observes, generally use election; the diseased governments use fraud and force.[21]

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[18] Ibid., i,7,1,2 and 3, p. 26.

[19] Ibid., i,8,2 and 3, pp. 27-28. Professor Gewirth, while not denying that the "consent of the governed" is found in the Politics, believes that Marsilius, in demanding this as a primary criterion for a just government, is departing from Aristotle and the Aristotelian medieval tradition. Ibid., p. 27, n. 5.

[20] Ibid., i,9,5-6, p. 32.

As with all medieval political philosophers Marsilius must essay the role of law. Its nature and function are keystones in his structure, which will ultimately posit sovereignty in the legislator.

Law and the Supreme Legislator

After a thorough treatment of the various concepts of law, Marsilius arrives at the familiar meaning of law as signifying a science or judgment regarding matters of civil justice and their opposites. He makes a two-fold distinction of this type to secure the version he deems most essential. One form consists of viewing law in terms of what is just or unjust and is called the doctrine of right (*juris*). The other aspect becomes his choice of what law ideally should be.[22] Law, he observes, "is an ordinance made by political prudence, concerning matters of justice and benefit and their opposites, and having 'coercive force', that is, concerning whose observance there is given a command which one is compelled to observe..."[23]

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[21] *Ibid*., i,9,7, pp. 32-33.

[22] *Ibid*., i,10,3-4, pp. 35-36.

Marsilius hastens to add that there are certain laws that command an observance of injustice. Such laws have proper form inasmuch as they contain a coercive command, but they lack a true ordering to justice and hence are not absolutely perfect.[24] He ignores the extremely crucial question of whether a subject is obliged to obey such laws and proceeds to a consideration of the impartiality law should possess.

Law, he notes, is universal and impartial while human judges can be swayed by emotions. As a result, law itself should be the determining factor in guiding the commonwealth. From Aristotle's Politics, Bk. III, Ch. 9, and the Rhetoric, Bk. I, Ch. 1, he quotes a substantiating view to the effect that law is a better rule than the guidance of the best man without law because of the ever-present passionate factor in the human order.[25] Moreover, even when judges possess emotional stability and the highest moral intent they may well err through ignorance; law, however, will always determine impartially what is just and unjust.[26] In effect, Marsilius is asserting that the community should entrust as little as possible to the discretion of the judge because of malice and possible ignorance. Law, in terms of virtue, is superior to man. This view, he contends is consistent with that of Aristotle, reason, and common experience.[27]

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[23] Ibid., i,10, 4, p. 36: "(est) ordinatio de justis et conferentibus et ipsorum oppositis per prudentiam politicam, 'habens coactivam potentiam', id est, de cujus observatione datur praeceptum quod quis cogitur observare..." Professor Gewirth points out that Marsilius, in emphasizing coerciveness as the essence of law, is departing from the traditional medieval view which stressed reason as the essence. Ibid., p. 36, n. 15, cf. also McCoy, The Structure of Political Thought, op. cit., p. 129.

[24] Marsilius, op. cit., i,10,5, p. 36.

[25] Ibid., i,11,2, p. 38.

Marsilius has now reached the threshhold of his concept of sovereignty. Who, he inquires, possesses the authority or power to formulate coercive human law, command its observance, and punish its transgression?[28]

Based on his interpretation of a passage of Aristotle's Politics, Bk. III, Ch. 6, he replies that ..."the legislator, or the primary and proper efficient cause of the law, is the people or the whole body of citizens, or the weightier part thereof, through its election or will expressed by words in the general assembly of the citizens, commanding or determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment..."[29]

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[26] Ibid., i,11,3, p. 38.

[27] Ibid., i,11,4-6, pp. 41-42.

[28] Ibid., i,12,2, pp. 44-45.

Marsilius next states explicitly that by "weightier part" he is taking into consideration the quantity and the quality of the persons of the community over whom the law is made.[30] In effect, this view must be understood not as the unqualified or absolute majority of the people expressing their will, i.e., the "majority rules" concept, but in terms of both number and quality. Thus Marsilius prevents the average man from being subjected to the mercy of the better qualified and the better qualified to the mercy of the average.[31] Absolute, not proportional equality, belongs essentially to modern democracy, as Professor McIlwain observes, and is implied in the view of majority rule; however, this latter tenet was as abhorrent to Marsilius as it had been to Aristotle.[32]

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[29] *Ibid.*, i,12,3, p. 45: "...*legislatorem* seu causam legis effectivam primam et propriam esse *populum* seu *civium universitatem*, aut eius *valentiorem partem* per suam electionem seu voluntatem in generali civium congregatione per sermonem expressam praecipientem seu determinantem aliquid fieri vel omitti circa civiles actus humanos sub poena vel supplicio temporali..." (Italics mine.)

[30] *Ibid.*, As Professor Gewirth points out, earlier manuscripts omitted this reference to the "quality" of the persons, making it appear that Marsilius is here favoring a simple majoritarian vote, a view he did not entertain. *Ibid.*, p. 45, n. 6.

[31] Leo Strauss, "Marsilius of Padua," *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey, (Chicago: Rand McNally and Co., 1963), pp. 234-35.

[32] *Op. cit.*, p. 304.

For Marsilius this whole or "weightier part" of the citizenry is the legislator, whether it enacts law directly or entrusts its formulation to one or more persons, relatively, but not absolutely. All legislation is to be conducted by election and any change, suspension or interpretation of law for the common benefit must be effected by the same authority. Additionally, law must be promulgated by the same authority; hence, no citizen can plead ignorance of its demands.[33]

Fundamental to a grasp of his political concepts is an understanding of what Marsilius deems a citizen to be. Following Aristotle's lead in the Politics, Bk. iii, Chs. 1, 3, and 7, Marsilius conceives of a citizen as one who participates in civic deliberations or juridical functions according to his rank; children, slaves, aliens and women are excluded from this classification.[34]

Explicating his notion of sovereignty, Marsilius proceeds to prove his contention that the whole body or weightier part of the citizens should properly enact human laws. First, he argues that the primary authority to make laws belongs to that group alone from whom the best laws can emerge. But this best group is the whole body of citizens, or the weightier part, which represents the whole body. This factor of the weightier part is necessary, for it is almost impossible for men to agree unanimously on legislation and such disagreement should not be allowed to impede the common benefit. Furthermore, he continues, a defect in law can be better detected by a greater number than a part since every whole is greater in virtue than a separate portion. The common utility of law is better discerned by the entire multitude since so great a number would not willingly harm themselves by discriminatory laws. Such an outcome could scarcely obtain when one, or a few, enact laws for their selfish interests.[35]

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[33] Marsilius, op. cit., i,12,3, p. 45.

[34] Ibid., i,12,4, pp. 45-46.

In a second major proof Marsilius observes that citizens devising their own laws are more likely to observe them, for that law is better observed by each citizen which he seems to have imposed upon himself. Even a good law, imposed by one, or a few, might be reluctantly obeyed, while a less advantageous law, enacted by the consent of all, would command ready observance.[36]

Thirdly, he asserts, the power to cause laws to be obeyed belongs only to those who possess coercive power it is almost impossible for men to agree unanimously on legislation and such disagreement should not be allowed to impede the common benefit. Furthermore, he continues, a defect in law can be better detected by a greater number than a part since every whole is greater in virtue than a separate portion. The common utility of law is better discerned by the entire multitude since so great a number would not willingly harm themselves by discriminatory laws. Such an outcome could scarcely obtain when one, or a few, enact laws for their selfish interests.[35]

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[35] Ibid., i,12,5, pp. 46-47. By the "best" group being the whole body of citizens, Marsilius apparently means an equitable representation of all levels of society, not a ruling clique representative of a few powerful interests.

[36] Ibid., i,12,6, p. 47. Professor Gewirth points out that Aquinas, Tolomeo of Lucca, John of Paris, and other medievalists held that the citizens will work harder for a government in which they play a part, but none contend, with Marsilius's insistence, that the supreme legislative authority belongs only to the people. Ibid., pp. 47-48, n. 16.

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Thirdly, he asserts, the power to cause laws to be obeyed belongs only to those who possess coercive power over transgressors. And who can this group enjoying such power be other than the whole body of citizens, or the weightier part thereof? Therefore, they alone should formulate law.[37]

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[35] *Ibid*., i,12,5, pp. 46-47. By the "best" group being the whole body of citizens, Marsilius apparently means an equitable representation of all levels of society, not a ruling clique representative of a few powerful interests.

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In a fourth argument supporting his thesis that laws should be enacted by the whole people, or their weightier part, he maintains that whatever can benefit or harm all - all law is concerned with such practical considerations - ought to be known and heard by all. This effect is insured when all enact the laws within a community.[38]

Marsilius concludes this chapter of his work by commenting that the arguments he has just advanced serve to prove that the interpretation, approval, and suspension of laws are also the prerogative of the legislator.[39]

Characteristic of his thorough approach throughout the _Defensor pacis_, Marsilius next lists four popular objections to his view of reposing supreme power in the human legislator. First, most people are vicious and undiscerning. Second, it is impossible to harmonize the opinions of vicious and unintelligent citizens. A third objection consists in the contention that in any community the wise and the learned are few in contrast with the myriads of unlearned. And lastly, there is the argument that what can be efficiently discharged by the few is needlessly done by the many.[40]

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[37] _Ibid_.

[38] _Ibid_., i,12,7, p. 48.

[39] _Ibid_., i,12,9, p. 49.

Before countering these objections Marsilius proceeds to establish a cardinal principle of his political thought. This principle he derives from Aristotle's Politics, Bk. IV, Ch. 10; it asserts that the part of the state desiring the polity to endure must be stronger than the portion which opposes it.[41] Professor Gewirth charges that Marsilius is misinterpreting this passage since the latter is maintaining that this necessity on the part of the citizens is biological, while Aristotle would have held it was hypothetical.[42]

In this same vein Marsilius now boldly contends that it is impossible for most of the citizens not to desire the state to be well-ordered through virtue and law for this would be contrary to nature - would show a deformity in nature.[43]

With the preceding established, Marsilius next proceeds to answer the four objections he assumes will be launched against his view of the whole people, or the weightier part, as supreme legislator. Against the first he argues that most citizens are neither vicious and undiscerning most of the time; all, or most, of the citizenry are of sound mind and entertain a proper desire for a stable polity. True, not all, nor the greater number, can actually formulate laws, yet every citizen can exercise judgment upon that which has been discovered or proposed by another. To prove this point Marsilius observes that many can pass proper judgment on the qualities of a house or ship without being either carpenters or shipbuilders. Further, he argues, since the whole is greater than a part, then the whole of the citizenry, which includes both the wise and the less learned, should be superior to the wise alone.[44]

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[40] Ibid., i,13,1, pp. 49-50.

[41] Ibid., i,13,2, p. 50.

[42] Ibid., p. 50, n. 6.

[43] Ibid., i,13,2, pp. 50-51.

To the second objection Marsilius responds that while it would be easier to harmonize the opinions of a few, these few would not attend to the common good as effectively as the many. All too often the few are disposed to consult their private interests as, for example, the clergy are wont to do in their decretals.[45] This is merely one instance of Marsilius' anti-clericalism, which increases in virulency as his work progresses.

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[44] Ibid., i,13,3-4, pp. 51-52.

[45] Ibid., i,13,5, p. 53. Marsilius is certainly not anti-clerical in the sense of advocating the elimination of this class in society, for he has indicated earlier its necessary function. He is anti-clerical in imputing base motives to most of their activities and censuring their unwillingness to acknowledge absolute submission to civil authority.

Marsilius answers the third objection by following the tack employed in answering the first. Admittedly, law can be better enacted by the wise, yet the entire multitude (which includes the wise) can better discern and seek the common benefit than a part.[46]

The fourth objection Marsilius counters by admitting that while the multitude cannot discover the true and the useful by itself, nevertheless, it can judge, add to, or alter, these original principles.[47]

For Marsilius, then, legislation should entail the following procedure. The whole body of citizens should entrust to prudent and experienced men the formulation of certain standards (future laws). After these standards have been discovered and examined, they are to be laid before the assembled whole body of citizens, who will scrutinize these standards for any changes deemed necessary. Here the less learned can be of incalcuable value since they may often perceive a flaw in a law which, by themselves, they initially would have been incapable of formulating. This process further insures that the entire multitude receives an opportunity to hear and judge the merits of any law.

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[46] Ibid., i,13,6, pp. 53-54.

[47] Ibid., i,13,7, p. 54.

Next, continues Marsilius, a representative group elected by the entire citizen body will approve or disapprove of the standards investigated; or, if it so chooses, the entire citizen body, or the weightier part, may discharge this function by itself. After approval is secured, not before, these standards become laws; following their publication they make transgressors liable to punishment.[48] Thus the Marsilian wheel of legislation comes full circle.

In an evaluation of Marsilius' view of the sovereign role of legislation, certain principles, inherent in his political structure, become clear. As Professor Allen astutely observes, there is no theory of traditional right and wrong implied in these tenets; for Marsilius' system it is enough if the community, or its weightier part, acts as the legislator. Further, law is that which must be universally willed; it will be obeyed only if a need for it is perceived by the community.[49]

Other commentators also believe that innovations in law are being introduced. McCoy agrees with Gewirth that Marsilius is denying that law is defined by justice, or by its relation to the rational structure of natural law, as traditionally conceived by the medievalists. Instead, law is now sharply separated from these sources and is defined merely as coercive command. Further, as McCoy observes, Marsilius is giving evidence here of his Averroist principles. For just as the Averroists believed that in theoretical truth the human intellect precedes the "why" of things, so in the political realm there can be no "why" by which the law can be tested. It is the authority of the law's letter, written by the whole people, or the weightier part, that now becomes the sole measure of right.[50]

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[48] Ibid., i,13,8, pp. 54-55.

[49] Op. cit., pp. 181-83.

Gewirth believes that Marsilius departs from the Aristotelian and Thomistic concept of natural law because of Marsilius' specific view of human nature. Since the latter places politics in a biological context, the "natural" as conceived by him is always the primitive, never the perfected. The "natural" consists of man's material qualities, physical and biological, and is not concerend with his intellectual powers. Thus man's "natural" desire for the complete life is no more than that sought by any other brute animal. When the state is reduced to such a gross level of biological desire, obviously all political doctrines suffer a corresponding devaluation. Ideal ends, as posited by Aristotle and Aquinas, are reduced to mere original potencies and cravings.[51] "Thus, where 'natural law' in the sense of a standard of justice equivalent to or deduced from reason had been of controlling importance in the antecedent tradition, Marsilius' interpretation of the 'natural' enables him to deny the existence or political relevance of such law."[52] Marsilius merely refers to a primitive "quasi-natural law" which is beneath rather than above civil law.[53] Small wonder then, as McCoy concludes, that Marsilius views political power, through the medium of law, as rooted in those precepts which the whole people or the weightier part merely "will" for themselves.[54]

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[50] McCoy, The Structure of Political Thought, op. cit., p. 129.

How these principles affected Marsilius' view of divine and ecclesiastical law will become evident later in that section of his treatise where he advocates civil supremacy over the ecclesiastical. Meanwhile, for a comprehensive grasp of the Marsilian concept of sovereignty, it remains to explore his theory of the ruler's role within the framework of political society.

The Role of the Ruler and Its Limitations

Marsilius begins his treatise on the ruler, or pars principans, by insisting that the ideal ruler should possess two qualities: prudence and moral virtue, especially justice. Of the utmost necessity is prudence, for in those instances in which a course of action is not specified by law, he must rely on his better judgment. Cicero acting swiftly on his own initiative to quell the Catalinian conspiracy, and thus averting a civil war, was a classical example of a ruler's exercise of prudent judgment.[55] In such cases - and here Marsilius supports his view by quoting from Aristotle's Politics, Bk. III, Ch. 6 - a ruler must have supreme authority, since the laws do not speak with certainty. With such awesome responsibility the ruler must certainly possess prudence. Additionally, the need for the ruler to exercise virtue, especially justice, is of paramount importance, for if there is moral perversion in this lofty position the polity will suffer irreparable damage despite its laws.[56]

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[51] Gewirth, Vol. I, *Marsilius of Padua and Medieval Political Philosophy*, p. 55.

[52] *Ibid*.

[53] *Ibid*.

[54] McCoy, *The Structure of Political Thought*, *op. cit*., p. 130.

Pertinent to the subject of sovereignty is the manner in which the ruler is established. Marsilius is unmistakably clear in asserting that the efficient cause for establishing and electing a ruler is the legislator, or the whole body of citizens. This right belongs as exclusively to them as does the power to formulate law, a point he stressed at length earlier in his work. In addition, in the citizenry resides the power to correct and/or depose the ruler for the common benefit. The election of the ruler, Marsilius emphasizes, must always be by the authority of the legislator, which is the whole body of citizens or the weightier part thereof.[57]

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[55] Marsilius, op. cit., i,14,2 and 3, pp. 56-57.

[56] Ibid., i,14,5-6, pp. 57-58.

Thus for Marsilius the primary efficient cause of the state is the legislator; the secondary, or instrumental cause, is the ruler operating through the authority granted him by the legislator and according to the form it has prescribed. This form is law.[58]

It is far more convenient, he explains, to have a ruler directing a state rather than the entire multitude, since one or a few leaders can discharge this function more practically. Besides, since the ruler is really acting vicariously for the community, in the final analysis it is the community which is performing the operation.[59]

To delineate clearly the ruler's position Marsilius resorts to a forceful analogy. The state and its parts established by rational beings are comparable to the animal perfectly formed by nature. Aristotle, says Marsilius, employs this same analogy in the *Politics*, Bks. I and V, Ch. 2, as well as in his *De partibus animalium*,

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[57] *Ibid*., i,15,2, p. 61. (Italics mine.)

[58] *Ibid*., i,15,4, p. 62.

[59] *Ibid*., p. 63.

Ch. 16. In this latter work Aristotle speaks specifically of the heart being formed first and being more noble than the other parts since it has the function of directing them.[60] Now, the soul of the whole body of citizens, or its weightier part, forms in the body politic a part analogous to the natural heart; this is government. Government is necessary to control contentions among men and to prevent them from inflicting injuries upon one another. Men, he asserts, are avenged by justice and law, and it becomes the function of the ruler to measure all matters according to law. If this duty is not discharged, men die and the state perishes.[61]

The ruler, then, in accordance with virtue, law, and the authority granted him, establishes and differentiates the various parts and offices of the state; within the bounds of law he possesses the powers of judgment, command, and execution concerning any measure he may determine necessary for the welfare of the state.[62]

In addition, the ruler, by his authority and in accordance with law, must command what is just and prohibit the contrary; he should also reward or punish according as the citizenry obey or transgress his legal precepts.[63]

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[60] *Ibid*., i,15,5, p. 63.

[61] *Ibid*., i,15, 6, p. 64.

[62] *Ibid*., i,15,8, pp. 65-66.

This ruling part of the state, Marsilius explains, conserves the other parts and insures their harmonious functioning and intercommunication. Especially must the ruling part see to the correction of citizens committing acts of violence.[64]

Since the role of the ruler is an integral part of his overall concept of sovereignty, Marsilius now deems it appropriate to discuss the manner in which a monarch is selected. Should monarchy be hereditary or elective? His previously established principles indicate that he will choose the elective variety - and so he does. In general, he observes, the elective method is better for the commonwealth for three reasons. First, this form almost always aims at the common benefit of the citizens. Second, the elective method always possesses any benefits the hereditary offers and can certainly improve upon the latter in instances when an heir is not virtuous or prudent. Third, an elected monarch's diligence is insured by the following considerations: he is obviously selected because of his virtue; he will fear correction by a subsequent ruler; he will want his offspring worthy of election, hence, will provide them virtuous training as well as a thorough education.[65]

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[63] *Ibid.*, i,15,11, p. 66.

[64] *Ibid.*, i,15,12, p. 67.

To advance the case for popular sovereignty, Marsilius again follows his characteristic pattern of treating the subject as thoroughly as possible. He cites eleven arguments employed to defend the system of hereditary monarchy and then proceeds with a rebuttal of each.

The first argument advanced by the pro-hereditary faction alleges that a prince will take better care of that which he considers his own possession. To this Marsilius answers that the elected monarch will actually take better care of the kingdom than one who considers it his own property and might thereby become indifferent regarding its welfare. Besides, an elected monarch will seek to excel because he will be seeking fame and glory for himself and his posterity.[66]

To the second argument, that the hereditary successors of monarchs will be accustomed to ruling and not act excessively proud as the "new rich" often do, he answers that newly elected rulers will be more diligent than hereditary ones, for the latter often become despots through malice, imprudence and a feeling of impunity. The charge of "new rich" arrogance is baseless since the elected monarch will have been selected specifically for his virtue.[67]

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[65] Ibid., i,16,11-13, pp. 71-72.

[66] Ibid., i,16,1 and 14, pp. 68-69 and 72-73. Gewirth points out that Marsilius' view of the ruler's reward being secular was opposed to the common medieval tradition that only the future life could be an adequate reward for a virtuous monarch. Ibid., p. 73, n. 24.

The opponents' third argument asserts that subjects will have become accustomed to obeying the predecessors of a certain family and to introduce change will disturb the community. Not so, responds Marsilius, for novelty gives rise to admiration and respect for a newly chosen leader. Besides, the custom of obeying is directed to the laws and quality of government, not the person of the ruler.[68]

A fourth position argues that a family of excellence deserves to have its members rule in hereditary succession. Marsilius answers that it is still highly probable that an upright family may produce degenerate offspring, in which case election of a ruler would be a superior method. He grants that perhaps a hereditary ruler may be better fitted for some kingdoms, but this fact does not prove the hereditary form of rulership is universally superior.[69]

The belief that hereditary successors incline toward virtue by being the sons of eminent rulers is the substance of the fifth argument. To this Marsilius responds that the elective method is still superior since it assumes that in selecting a candidate he is fully developed in virtue, not just inclined toward it.[70]

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[67] _Ibid._, i,16,1 and 15, pp. 68-69 and p. 73.

[68] _Ibid._, i,16,2 and 16, p. 69 and 74.

[69] _Ibid._, i,16,3 and 17, p. 69 and pp. 74-75.

Opponents contend that the difficulty of securing virtuous electors renders the elective method unfeasible. To this sixth argument Marsilius retorts that electors were needed at the outset of the hereditary system and they could have erred in their original choice. Moreover, the elective method is controlled by the legislator, who will be seeking the common good. Any difficulty in election stems not from election as an essential cause, but from the malice and ignorance of a few.[71]

In a seventh argument Marsilius' adversaries contend that the hereditary system makes it easier for the ruler's counselors to ascertain the moral character of a hereditary monarch rather than that of an unknown, newly-elected candidate. Again, Marsilius answers that one may assume that an elected ruler was chosen for his virtuous qualities, hence, would listen attentively to righteous counselors. There is no assurance that an evil heir would act so prudently.[72]

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[70] Ibid., i,16,4 and 18, pp. 69-70 and pp. 75-76.

[71] Ibid., i,16,5 and 19, p. 70 and 76.

[72] Ibid., i,16,6 and 20, p. 70 and 77.

In an eighth argument it is claimed that a hereditary system eliminates pernicious ambition, self-promotion and sedition on the part of citizens eager to acquire power. Marsilius responds that if citizens are misruled or given little opportunity to govern themselves, as would occur under a tyrant, unrest and sedition can be far more widespread.[73]

A ninth argument states that an elected monarch will not bring powerful criminals to justice for fear of retribution when his term of office is completed. Marsilius' reply is that these renegades are not likely to attempt such revenge for fear of the legislator and the fact that the next ruler would punish them again.[74]

In a tenth argument, the pro-hereditary faction maintains that their method is more natural, hence more perfect, since it has been employed by more nations throughout history. Marsilius concedes that the hereditary form has possibly been adopted more often that the elective, but this doesn't prove the superiority in species of the former. The elective method is not a corruption or a privation of the hereditary, as some might allege; the elective form is valid in its own right.[75]

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[73] Ibid., i,16,7 and 21, pp. 70-71 and p. 78.

[74] Ibid., i,16,8 and 22, p. 71 and pp. 78-79.

[75] Ibid., i,16,9 and 23, p. 71 and 79.

The eleventh and last claim of his opponents asserts that hereditary monarchy resembles more the one ruler of the universe. Marsilius replies that the true analogy involved here may be overlooked. It is found specifically in an elected monarch's virtue conforming to that of his righteous predecessors and, ultimately, to that of the primary ruler of the universe. The similarity does not consist in establishing the lineage of one ruling family.[76]

Marsilius' advocacy of popular sovereignty has been presented in detail - but with a purpose. His claims for elective monarchy lend themselves to better evaluation when contrasted with opposing views such as, for example, those previously presented by Egidius Colonna.

Assured that he has established the need for popular sovereignty, Marsilius next turns to the consideration of how the unity of the pars principans, or ruling part, insures that unity and order so essential for the state. This treatment forms a vital part of his overall concept of sovereignty and will influence significantly his attitude toward the Church - state conflict, which he will discuss in greater detail later.

In any state, he asserts, there must be but one single government, or if there is more than one, as in large cities and states, there must be among them one in number which is supreme. True, in aristocracies or polities, several persons may be found ruling. However, no action can emerge from any one of them separately but only from the common decree and consent of them all, or their weightier part.[77]

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[76] Ibid., i,16,10 and 24, p. 71 and pp. 79-80.

If there were several governments instead of one supreme ruling power, then the judgment, execution and command of matters relating to benefits and justice would be aborted. Injuries would go unavenged; fighting and disruption would paralyze the state. In this confusion citizens would be at a loss as to what government they should rightfully obey. The end result would be the various governments vying for supremacy, each punishing those citizens who refused it allegiance.[78]

With more than one government there would be no ordering of parts within the commonwealth; no proper subordination or subjection of one division to another. In the ensuing confusion, each man would merely choose the office which seemed most opportune.

But the state simply must have unified order if it is to survive. Marsilius explains that it must possess a *unity of order*, not an *absolute unity*. In the former concept the plurality of men do not become one heterogeneous mass with a single form, rather their unity derives from being related to a single form of government toward which and by which they are ordered and regulated.[79] Likewise, each of the state's office is one in number and one part of the state, despite the plurality of persons comprising that office. This unity obtains not because of one thing inhering in them all, but because they are referred to the one active command of a ruler who operates in accordance with the determination of law.[80]

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[77] *Ibid*., i,17,1-2, pp. 80-81.

[78] *Ibid*., i,17,3 and 5, p. 81 and 83.

Marsilius now elaborates further upon the curbs which the legislator must impose upon the ruling part. No rulerships or coercive jurisdiction belongs to any group or rank unless granted them by the authority of a divine or human legislator. Moreover, and here he repeats a principle affirmed earlier, it belongs to the legislator to correct or change governments completely as well as to establish them.[81]

A ruler, by the authority invested in him, is a measure of civil acts and, as noted before, his functions parallel those of the heart in an animal. Had the ruler no other form except law and authority and the desire to follow them accordingly, his function would be identical with that of the heart; there would be no problem. However, the ruler is human; by nature he possesses understanding, has appetites, and can acquire false opinions and perverted desires. As a consequence, he must be measured by someone with the authority to regulate him, else government would become despotic.

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[79] Ibid., i,17,11, p. 85. This explanation, as Gewirth observes, is drawn almost exclusively from Aquinas' In decem libros Ethicorum Aristotelis ad Nicomachum expositio, i,1. Ibid., p. 85, n. 16. In this sole instance of Marsilius quoting from Aquinas, he neglects to credit the source. (Italics mine.)

[80] Ibid., i,17,12, p. 86.

[81] Ibid., i,17,13 and i,18,1 pp. 86-87.

Such correction must be undertaken by the legislator itself, or those assigned by the legislator. During the period of correction, the ruler's office is to be suspended, otherwise, there would result a plurality of governments.[82]

A ruler's offenses may fall into numerous categories, but such excesses cannot go unavenged without an upheaval in the polity. If they fall within the law, they are to be punished accordingly; if outside the law, they are to be corrected by the sentence of the legislator.[83] Should the ruler's offenses be trivial and infrequent, they are to be overlooked since prosecution for such peccadillos would bring contempt upon his office. It will be recalled that John of Salisbury, Thomas Aquinas and Egidius Colonna expressed the same view. However, Marsilius adds that if a slight excess by a ruler occurs frequently its punishment should be determined by law and appropriately applied.[84]

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[82] *Ibid.*, i,18,2 and 3, pp. 87-88.

[83] *Ibid.*, i,18,4, p. 88.

Marsilius begins the final chapter of Discourse One by relating his original aim to the ruler's role in the polity. This aim was to insure tranquillity within the state. Such tranquillity, he recalls, was that good disposition within the city or state whereby each part performed its proper function according to reason and the purpose of its original establishment. Since the due action of the ruler is the efficient and conserving cause of civil benefits, Marsilius concludes that this action is also the efficient cause of tranquillity within the state.[85] Little doubt should remain regarding his choice of a title for his entire work.

But if the ruler's purpose is to insure tranquillity within the state, observes Marsilius, then that purpose is being threatened by a development peculiar to Christianity, something which Aristotle could not possibly have foreseen. This development has occasioned ceaseless dissension within the Italian state for countless decades.[86] It consists in the papacy's insistence that it has total coercive power in all matters over all secular rulers and peoples. Such plenitude of jurisdiction over secular rulers by the Roman bishops cannot rightfully be defended, says Marsilius, nor do the temporal rulers seek to be cast in this submissive role. To refute this pernicious doctrine by every weapon at his disposal now becomes a duty he cannot shirk, and to it he will attend in the remainder of his work.[87]

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[84] _Ibid_., i,18,5-7, pp. 88-89.

[85] _Ibid_., i,19,3, p. 90.

[86] _Ibid_., i,19,3-4, p. 91.

The question of whether Marsilius's concept of the ruler's authority represents a departure from the medieval tradition lends itself to no easy solution. Carlyle believes that the idea of the legislator entrusting authority to the ruler but controlling his activity by law manifests a definite distinction between the executive and legislative branches. However, such a view was already implicit in normal medieval political theory, observes this author. That the king was responsible to the community for violating the law is not only a belief of an alleged extremist such as John of Salisbury but is also the teaching of such a careful and measured political thinker as Thomas Aquinas.[88]

McIlwain dissents from the foregoing and proceeds to demonstrate how Marsilius's view of the ruler departs from the traditional Aristotelian concept. For Aristotle the _politeuma_, or constitution, moulded the state; for Marsilius the supreme ruler moulds also, but only as an instrument of, and by, the authority of the legislator, which controls him through the form of law. The ruler, then, is no more than an organ of the state, an instrument of the people, in fact, their servant. In McIlwain's opinion Marsilius's concept of the state is legal, whereas Aristotle's is natural and organic, thus, the pars principans of Marsilius is not the executive as we know him. Actually, McIlwain professes to seeing nothing of democracy in the Defensor and denies that it possesses any "separation of powers."[89]

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[87] _Ibid._, i,19,7-13, pp. 93-97.

[88] Carlyle, _op. cit._, Vol. VI: _Political Theory From 1300 to 1600_, pp. 42-44. Cf. also Allen, _op. cit._, pp. 181-83.

In the opinion of Strauss, Marsilius errs in labeling his ideal state a polity, for a polity is a form of government, but Marsilius, as noted by McIlwain above, makes the ruler distinct and separate from the government. This was bound to happen when Aristotle's natural concept of the state was supplanted by a legal construct. But Strauss objects most strenuously to an alleged inconsistency in Marsilius' system. While the latter proclaims the virtue of all participating in government, he violates this principle in having the human legislator (the people) delegate this power to one or several men. He actually retracts the principle of popular sovereignty. Strauss believes that Marsilius' system would actually permit the ruler to identify himself with the legislator and assume that he derives his power ultimately from his own will. This interpretation, says Strauss, is quite consistent with Marsilius' praising Cicero for quelling the Catalinian conspiracy. Here a ruler consulted his own will, not that of the legislator.[90]

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[89] Op. cit., pp. 306-07.

Whatever the divergent interpretations regarding the power Marsilius assigns the ruler, it seems that the overall thrust of his political theory favors popular sovereignty. He might have traced in greater detail the procedure the human legislator should follow in exerting its sovereignty over a ruler's activities. However, he is more concerned with principle than detail. Perhaps a full understanding of his concept of sovereignty can be attempted only after investigating his treatment of the Church-state power struggle. This subject fittingly comprises the final portion of this work.

State "Coercive" Authority Over the Ecclesiastical Realm

Basically, Discourse Two of the *Defensor* is an attack upon the papacy and the sovereign claims of the Church. As Professor Allen remarks, this section abounds in irrelevant diatribes against the Pope and clergy, much of which amounts to general claptrap. It lacks, in Allen's opinion, the more logical and profound aspects of Discourse One.[91] Certainly, in this second section Marsilius, at times, seems to ramble tediously and is often excessively repetitious, but he appears to have three major objectives. He sets out to prove: (1) that the Church has no claim to "coercive" power; (2) the Pope and clergy should be subject to the jurisdiction of secular rulers and, as such, have no right to govern or speak for the Church; and (3) the clergy have no title to the ownership of property.[92] These divisions are not absolute and often merge, but they can serve as a practical guide in analyzing this section.

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[90] *Op. cit.*, pp. 234-35.

[91] *Op. cit.*, pp. 185-87 and 189-91.

Basic to an understanding of Marsilius' conclusions is an acceptance of two key definitions he provides at the outset of this discourse: one relates to the Church, the other to legal judgment. For him "the 'Church' means the whole body of the faithful who believe in and invoke the name of Christ, and all the parts of this whole body in any community, even the household."[93] A "judgment" he conceives of as the sentence of a ruler who has the authority to judge what is just and beneficial in accordance with law or custom and to command and execute through coercive force the sentences he has issued.[94] It is precisely this power of "coercion" that Marsilius reserves exclusively for the jurisdiction of the secular ruler, or human legislator, but emphatically denies to the papacy and the clergy.[95] Christ, since he was God, could have bestowed upon his Apostles and their successors coercive power over all rulers and individuals, observes Marsilius, but He refrained from coercion Himself and excluded His followers from its exercise.[96] In support of his stand Marsilius quotes from John 18:36 the passage in which Christ informs Pilate that His kingdom is not of this earth.[97] On the basis of reason alone, Marsilius continues, two coercive dominions over the same multitude would be impractical; one or the other would have to be properly subordinate, else they would impede one another.[98]

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[92] Ibid., p. 184. Actually Professor Allen lists four divisions, but since his second and third points virtually imply one another it was deemed advisable to combine them.

[93] Marsilius, op. cit., ii,2,3, p. 103: "Ecclesia (dicitur) de universitate fidelium credentium et invocantium nomen Christi, et de huius universitatis partibus omnibus in quacumque communitate, etiam domestica."

In addition, says Marsilius; the writings of many early Church Fathers, especially Augustine and Chrysostom, indicate that they did not believe that Christ's kingdom involved the coercing of transgressors but merely the teaching of faith.[99]

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[94] Ibid., ii,2,8, p. 108. (Italics mine.)

[95] Ibid., ii,1,4, p. 100. Cf. also ii,4,1, p. 113.

[96] Ibid., ii,4,2-3, p. 114.

[97] Ibid., ii,4,4, p. 115.

[98] Ibid., ii,4,5, p. 116.

Since Christian tradition so obviously opposes them, why, asks Marsilius, are so many priests interfering with coercive secular judgments and seeking to exercise these powers themselves? These churchmen are to be warned; if they do not desist, they shall be compelled by the secular rulers to mend their ways.[100]

Marsilius clearly asserts that reverence is due the clergy in all that they teach according to evangelic law. Yet, a pastor neither should nor can compel observance of any practice by infliction of pain or punishment on another's property or person. Scripture forbids such a course. Such coercive measures can only be imposed by *human laws* or the *human legislator*. And even if this power to coerce were allowed the clergy, the outcome would be meaningless; persons forcibly compelled to obey divine laws are not being helped toward salvation.[101]

At this juncture the question naturally arises: What powers do the clergy possess? Marsilius answers that Christ conferred on them the power merely to teach, baptize, and administer the sacraments in general (especially penance). The Roman bishops err in claiming their plenitude of power from the bestowal of the keys of the kingdom (Matt. 16:19). Christ wished his priests to frighten sinners and thus exhort them to improve the health of their souls, but He authorized no clergyman to employ coercive judgment in this respect.[102]

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[99] *Ibid*., ii,4,7, pp. 117-18. Cf. also ii,9,4-6, pp. 166-67.

[100] *Ibid*., ii,4,13, pp. 124-26.

[101] *Ibid*., ii,5,6, p 134. (Italics mine.)

Marsilius is not opposed to punishing heretics and infidels by coercive measures, but the only lawful authority for this decision derives from the human legislator, not from the clergy. Nor have the clergy any right to absolve from their oath of fealty the subjects of an excommunicated ruler, for this is an usurpation of coercive judgment.[103]

To the practice of excommunication Marsilius voices no objection, but he would change its format. No priest should be allowed to render a coercive judgment in this process. A judge who will summon, examine, and judge the accused is to be appointed by the *whole body of the faithful*. If the defendant receives a sentence, and since this definitely involves his being cut off from the worldly community, it should be pronounced and executed by this same civil judge. A priest is to promulgate and confirm the sentence on the part of the Church, but do nothing more in the proceedings.[104] Marsilius believes that judgment by the whole body of the faithful assures greater certainty and is less subject to suspicion than that of the clergy. The latter could be swayed by love, hatred or considerations of private advantage. Also, if bishops and priests alone could excommunicate, then the clergy would possess the power to remove all states from allegiance to their rulers. These same clergymen could ultimately destroy any leader by excommunicating all subjects who obeyed the excommunicated monarch.[105]

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[102] *Ibid.*, ii,6,1-2, pp. 140-41; ii,7,4, p. 155; and ii,10,2, p. 174.

[103] *Ibid.*, ii,5,7-8, pp. 136-38.

[104] *Ibid.*, ii,6,12, pp. 148-49. (Italics mine.)

It is obvious so far that Marsilius, for all practical purposes, is moving toward the reduction of all law to human positive law; this becomes increasingly more evident as he undertakes the discussion of human and divine law. Human laws are the standards for controlling transient human acts in regard to their rightness or wrongness, their benefit or harm; for transgressing these laws coercive punishment is employed in this life. Divine laws are different. They are standards controlling human acts, both immanent and transient, but the mind determines the right and wrongness involved with an eye to one's status in a future life. Coercive punishment is attached to their violation but is inflicted in a future world, not the present one.[106]

It is clear, says Marsilius that there must be a truly existing judge who can punish coercively when either human or divine laws are violated. The judge possessing the power to punish coercively any transgression of human law is the secular ruler. His jurisdiction applies equally to punishing those clergymen who violate human laws as well as to the laity.[107]

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[105] Ibid., ii,6,13, p. 151.

[106] Ibid., ii,8,5, pp. 158-59.

Who then becomes the coercive judge of those transgressing divine law? Christ alone, responds Marsilius, but He does not exercise His coercion in this life, for He desires that all have the opportunity to repent freely before they die. A priest may judge only to the extent of teaching what must be done or avoided to secure eternal life. He has no coercive power in this world to compel anyone to follow divine commands. One who complied through coercion in matters spiritual, as noted earlier, would not be assisted toward salvation.[108]

That coercive judgments apply only to violations of human law is made evident in Marsilius' detailed treatment of heresy. In the early Christian period, he states, Jews, heretics, and infidels were not prohibited by human law from dwelling with the faithful. Neither should they now be coerced in property or person. And the reason is this: no one should be punished in this world for sinning against a practical or theoretical discipline precisely as such, but only for violating a human law.[109]

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[107] Ibid., ii,8,6-7, pp. 159-60.

[108] Ibid., ii,9,1-2, pp. 163-64. Cf. also ii,10,11, pp. 179-80.

In a trial involving heresy a priest possesses only the authority of declaring whether the charges are heretical. The accused is entitled to a trial before a civil ruler; he is to be judged solely on the basis of whether or not his deed violated a human positive law.[110]

Marsilius clearly states that no one is to be punished by a ruler merely for breaking a divine law, for there are many mortal sins - divine law violations - which a ruler may permit but the clergy must forbid. One example is that of fornication.[111] "But if the heretic's sin against divine law is such as human law also prohibits, then he is punished in this world as a sinner against human law."[112] Conversely, adds Marsilius, one who sins against human law will be punished in the next world for violating divine law, not for transgressing human law.[113]

Again Marsilius stresses his principle that the ruler, by the authority of the human legislator, is the only one who may punish coercively a heretic, schismatic or infidel. If bishops and priests were allowed to exercise coercive judgment, there would result a chaotic multiplicity of rulers within the state.[114]

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[109] Ibid., ii,10,3, p. 175.

[110] Ibid., ii,10,6, pp. 176-77.

[111] Ibid., ii,10,7, p. 177.

[112] Ibid.: "Sed peccans in Legem Divinam, haereticus scilicet, tali peccato etiam humana lege prohibito, punitur in hoc saeculo inquantum peccans in legem humanam."

Earlier in this paper, under the heading of "Law and the Supreme Legislator," mention was made of Marsilius' divorce with tradition regarding natural law. In Discourse Two he makes it evident why natural law, in his political scheme, is meaningless; why human law - the will of the human legislator - is the only valid type in the worldly community.

He quotes Aristotle in Bk. IV of the Ethics as stating that natural right (or law)..."is that statute of the legislator with respect to which almost all men agree that it is honorable and should be observed."[115] Some men, Marsilius admits, define natural law as a dictate of right reason in practical matters and trace its source to divine law. Thus, they argue that everything done according to divine law and in keeping with right reason is lawful in an absolute sense; many human laws fail in this respect since they fall away from right reason. But this view employs the word "natural" in an equivocal sense, according to Marsilius. For there are many things which accord with right reason but are not agreed upon as honorable by all nations, namely, things not self-evident to all, and consequently not acknowledged by all. Additionally, there are commands and prohibitions which accord with divine law but not with human law.[116] Marsilius has erased the traditional view that postulated divine law and natural law as blueprints for human positive law. Henceforth, his system must rise or fall on the merits of an emancipated - but rootless - form of law grounded only in the shallow soil of the legislator's "will".

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[114] Ibid., ii,10,8-9, pp. 177-78.

[115] Ibid., ii,12,7, p. 190: "...statutum illud legislatoris, in quo tamquam honesto et observando quasi omnes conveniunt...". To be exact, as Gewirth notes, Aristotle defined natural right as that law which everywhere possesses the same validity, and does not depend upon men's thinking one way or the other on the matter. He does not connect it with positive enactment or the universal agreement of men as Marsilius contends. Ibid., p. 190, n. 9.

The arguments for Marsilius' first objective, i.e., the clergy have no claim to coercive judgment, have been presented. In a second objective he will argue that all clergymen must be subject to secular jurisdiction, consequently, the Pope and other religious do not govern or speak for the Church.

Christ was the exemplar in this respect, as witnessed by His urging that those things due Caesar should be rendered Caesar (Matt. 22:17) and by the Master's paying the tax with money extracted from a fish's mouth (Matt. 17:23). How dare the bishops and priests claim exemption from royal taxation in view of such a tradition![117] Moreover, Christ, in informing Pilate that the latter would have had no jurisdiction over Him were it not granted from above, is implicitly admitting that Pilate, as ruler, had coercive jurisdiction over Him.[118]

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[116] Ibid., ii,12,8, p. 191.

[117] Ibid., ii,4,9-10, pp. 119-20.

The Apostles understood, claims Marsilius, that Christ desired all of His followers to be subject to the coercive command of secular rulers, just as He regarded Himself similarly subjected. In that celebrated passage in which St. Paul states that every soul is to be subject to the higher powers (Rom. 13:1-7), there is conclusive evidence of this belief. Priests are not to be excepted.[119]

St. Paul's epistle to Titus (Titus 3:1) stresses the same message: all of the faithful are to be subject to the princes of this world.[120]

The history of the early Church followed steadfastly the admonitions of Christ and the Apostles regarding subjection to coercive secular authority. In the fifth century, under Constantine I, the first Roman ruler to permit Christian believers to assemble publicly, the regulations of Church were rigidly enforced on the clergy and laity by the coercive power of the civil ruler.[121] Nor was there any objection to this procedure, Marsilius observes. It was conceded that every bishop must be elected by the ruler and all of the people. Now since that which has the primary power to establish also has the primary power to depose, it was further conceded that a bishop could be deposed by the authority of the ruler and the people.[122]

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[118] __Ibid__., ii,4,12, pp. 123-24.

[119] __Ibid__., ii,5,4, p. 130. Cf. also ii,5,5, p. 133 and ii,5,7, p. 137.

[120] __Ibid__., ii,5,8, pp. 137-38.

[121] __Ibid__., ii,25,1 and 4, pp. 331 and 333.

No opposition arose until Pope Simplicius I (468-483 A.D.), incited by diabolical cupidity and avarice, wrongly decreed that no clergyman should receive his investiture from a layman.[123] The situation has worsened over the centuries, maintains Marsilius. Now the Roman bishops, desirous of temporal wealth, are not only refusing subjection to the human legislator, in direct opposition to Christ's mandate, but have added further insolence to their rebellion. They are opposing the taxes levied upon the Church by rulers who rightfully require such revenue for maintaining their soldiery in times of war. How ungrateful are these bishops and priests, these very ones who have received such generous material good and benefits from their civil rulers! Certain Roman bishops are even daring to level anathemas upon monarchs, are aggrandizing provinces for the papacy, and are falsely claiming coercive jurisdiction over all rulers and peoples.[124] Under the guise of possessing the universal care of souls, these Pontiffs are claiming a plenitude of power which would entitle them to supreme coercive jurisdiction over all rulers, peoples and temporal possessions.[125]

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[122] Ibid., ii,25,6, pp. 334-35.

[123] Ibid., ii,25,7, pp. 335-36.

Contrariwise, Marsilius vehemently insists upon the Pope and clergy being absolutely subject to the human legislator. He means for this subjection to apply even to basic ecclesiastical structure and matters almost entirely spiritual in scope. In his scheme he not only repudiates Church sovereignty; he actually strips it of almost every power, every prerogative. His first attack centers on the hierarchy. No Pope or bishop has any coercive jurisdiction over any other priest or non-priest unless it is granted him by the human legislator.[126] Basically, all priests by ordination receive the same powers, namely, those of consecrating, administering the sacraments and forgiving sins. No Roman bishop, or any other bishop, possesses any greater authority than any other clergyman, despite the claims of the former.[127] True, certain priests, by the election of men, have been set over other priests, but this is merely a _regulatory_ power for directing functions within God's house. It is not a coercive power for this can stem only from the human legislator. The Roman bishops have no more essential authority than any other bishop for the very reason that St. Peter's authority did not exceed that of any other bishop.[128]

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[124] _Ibid_., ii,25,13-15, pp. 339-41.

[125] _Ibid_., ii,25,17-18, pp. 342-43.

[126] _Ibid_., ii,5,9, p. 140.

[127] _Ibid_., ii,15,2-4, pp. 234-35.

Marsilius explains further that early churchmen, such as, Sts. Clement, Gregory, Nicholas and Jerome, deemed themselves as possessing no greater authority than others, but as being ordained merely to regulate Church rituals and guide the faithful in divine worship.[129]

Returning to the subject of Peter's alleged power, Marsilius maintains that any pre-eminence accorded Peter was mere reverence for his age, his intimacy with Christ and his fervent faith. Peter certainly exercised no coercive authority; all deliberations of the early Church flowed from the *congregation of learned believers*. How then, Marsilius asks, can certain clergymen trace their alleged plenitude of power to a source which never claimed it?[130]

The concept of diocesean assignment predicated on succession from St. Peter is flatly denied by Marsilius. There is no proof that Peter issued any territorial assignments; in fact, there is no Scriptural proof that he was bishop of Rome or ever visited Rome.[131] The Gospel passage (Matt. 16:18) in which Christ seemingly informs Peter that the saintly fisherman is the rock upon which the Church will be established is misunderstood; by "rock" Christ meant Himself.[132]

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[128] *Ibid*., ii,15,7, pp. 237-38. (Italics mine.)

[129] *Ibid*., ii,15,8 and 10, pp. 239-40.

[130] *Ibid*., ii,16,4-10, pp. 243-48. (Italics mine.)

The assignment of ministers to certain territories belonged to the whole body of believers in the early Church. Fittingly, then this prerogative, as well as the selection of candidates for the priesthood and episcopacy, should emanate exclusively from the expressed *will* of the *entire multitude of believers in an area*. The deposing of immoral clergymen should also belong to this group in order to safeguard the morals of the community. Marsilius argues that this position is reasonable since that which can be achieved by all, or almost all, is better done than an operation performed by one person alone (e.g., a Pope or bishop). Referring to his familiar theme, he summarizes his position by asserting that the election, assignment, and presentation of candidates to any ecclesiastical office pertains to the *human legislator, or the multitude of* believers in that area.[133] Actually, if need be, this human legislator may compel a minister to administer a sacrament necessary for salvation, e.g., baptism.[134] No infidel rulers possess these aforementioned powers since theirs is not a perfect community.[135]

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[131] *Ibid*., ii,16,13-16, pp. 249-52.

[132] *Ibid*., ii,17,2, p. 254.

[133] *Ibid*., ii,17,5-11, pp. 256-62. (Italics mine.)

Even in such matters as interpreting disputed passages of Scripture and assembling Church councils, secular power is assigned primary authority by Marsilius. Certain passages in the "canonic" Scriptures (the only writings that truly bind the faithful) may vitally affect man's salvation, yet their interpretation may lend itself to doubt. These doubtful passages will have to be clarified at a general council which receives its inspirational truth from the Holy Spirit, but its *coercive authority* for observance and acknowledgment from the *faithful human legislator*, which *knows no superior*.[136]

Marsilius proposes this procedure for assembling a general council. Let all of the notable provinces of the world, in accordance with the direction of their human legislators, elect faithful representatives, priests and non-priests alike, who are well versed in divine law. These men, representing the whole body of the faithful and deriving their authority from this body, are to assemble at a convenient place and settle these doubtful matters relevant to divine law. They are also to issue decrees on proper ritual and any other subject contributing to harmony within the community of the faithful. The legislators are obliged to provide all necessities for the proper functioning of the council and, if necessary, coercively compel, for the public welfare, the attendance of those selected as representatives.[137] Thus, it pertains to the authority alone of the faithful legislator, who possesses no superior, not only to summon and direct a council, as specified above, but also to punish coercively anyone who transgresses the decrees of such a council.[138]

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[134] *Ibid*., ii,17,12, p. 262.

[135] *Ibid*., ii,17,15, p. 264.

[136] *Ibid*., ii,19,1 and 3, pp. 274-75. (Italics mine.)

But Marsilius is apparently prepared to deny nothing in matters religious to the nod of the faithful human legislator. Without the legislator's authority there can be no regulations established concerning fasting, abstinence, canonization and veneration of saints, marriage, and the approval of religious orders. Especially is this true if the regulations involve censure, interdict, excommunication, and the like, or entail punishment to person or property in this life.[139] Also, it belongs to the authority of the human legislator to revoke the teaching licences of the Pope or any other priest, for this is a prerogative of the former, who must guard the citizens from all contamination.[140]

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[137] Ibid., ii,20,2-3, pp. 280-81.

[138] Ibid., ii,21,1, p. 287.

[139] Ibid., ii,21,8, pp. 292-93.

Marsilius denies the Roman bishops and clergy any authority in the foregoing proceedings because of their alleged incompetence and corruption. A Pope might lapse into heresy and issue false decretals; he cites Boniface VIII and John XXII as examples in this category. If Rome is given the authority to settle doubtful questions, then all secular governments would be subjected to its coercive jurisdiction.[141] Since the clerical regime is so corrupted by material considerations, few priests and bishops are sufficiently versed in Scripture to function as dependable interpreters.[142] The Pope should not be allowed to summon a council, for if he and his colleagues were accused of a dubious practice necessitating a council, he would delay as long as possible or never attend to summoning it. Great harm would thus befall the faithful.[143]

Marsilius does make one concession to the papacy in this matter of conducting a council. By the authority of the faithful legislator, the Pope may be appointed to serve as "chairman" of the council, but in this capacity he possesses no coercive power in his own right. Such a procedure is not demanded by divine law but might serve to insure more orderliness in the course of the council's deliberations.[144]

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[140] _Ibid_., ii,21,15, 297-98.

[141] _Ibid_., ii,20,6-8, pp. 282-84.

[142] _Ibid_., ii,20,13-14, pp. 285-86.

[143] _Ibid_., ii,21,3, pp. 288-89.

His third and last major objective remains: proving the clergy have no title to the ownership of property. Temporal possessions, especially immovable items, set aside for the support of gospel ministers, definitely are _not owned_ by the clergy. They belong to the _legislator_, or to deputies appointed for this purpose by the legislator, or to the original donors. Tradition proves this point. In ancient times the saintly men who followed Christ did not assume the ownership of temporal possessions, but retained only those necessities required for their immediate support and the alleviation of the defenseless poor. If these ministers had not dispensed these good to the first poor they encountered, they would have been in violation of Christ's exhortation to go sell what one has and give it to the poor. Additionally, argues Marsilius, it would be heretical to allege that Christ owned temporal goods. If He did, then He sold them, else He would be violating His own counsel for perfection. If He disposed of these goods, then the Roman bishops and clergy have no claim to them as successors of Christ.[145]

Further proof of Christ's renunciation of worldly goods is found in His statement that He had not whereon to lay His head.[146] In a similar vein there is no evidence that St. Peter alone assumed the right to distribute the temporal goods of the early Church. If he refused such authority, why are the Roman bishops claiming for themselves the right of ownership and distribution of bequests left for charitable purposes?[147]

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[144] _Ibid._, ii,22,6-7, pp. 302-03.

[145] _Ibid._, ii,14,8, pp. 219-20. (Italics mine.)

"Ecclesiastic benefices", i.e., temporal possessions, are aside by either the legislator or individual groups to assist gospel ministers or the needy. If the legislator sets them aside, he may, if he wishes, revoke such authority. The *legislator* may also sell or alienate these temporal possessions for a reasonable cause since they *belong to him* and are rightfully in his power. If such goods represent the pious bequest or legacy of a donor, then they must be distributed accordingly to the donor's intention. The ruler has the duty to insure that this distribution is conducted properly. In addition, Marsilius points out that no temple can be constructed by a private group, nor a minister appointed, without the approval of the legislator.[148] In view of the foregoing, the Catholic kings of France, *de jure* and *de facto*, have the authority to appoint men to ecclesiastical office and distribute temporal goods and benefices, despite the counter claims of the Roman bishops.[149]

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[146] *Ibid*., ii,14,23, p. 232.

[147] *Ibid*., ii,16,8, p. 246.

[148] *Ibid*., ii,17,16, pp. 264-65. (Italics mine.)

A surplus of such goods may occur. In that event, the human legislator may collect taxes and revenue from this source to defray the reasonable expenses of defending the realm and providing it necessary services.[150] Not only may these surplus temporal goods be taxed, but they may actually be seized and used on the authority of the human legislator if the defense and maintenance of the commonwealth warrant such action. Such procedure complies with divine law despite clerical views to the contrary.[151]

Why the Pope cannot be allowed to appoint candidates to clerical office or distribute benefices is obvious, maintains Marsilius. Would not the Pontiff appoint henchmen as perverted as himself to perpetuate his shameful regime? If allowed to dispense benefices, his wealthy and corrupt cronies would be the recipients, not the learned and deserving poor. By such devices the Roman bishop could establish a secular influence powerful enough to threaten the legitimate authority of the human legislator.[152]

The consequences of Marsilius' doctrine as they pertain to sovereignty are not difficult to perceive. Egidius Colonna had contended the state was a department of the Church; Marsilius will have it that the Church is a department of the state.[153] McIlwain believes that in the Church-state struggle, the churchmen were the first to perceive that what each organization was claiming in the name of liberty was supremacy. In the early fourteenth century the clergy were claiming just such mastery, but the *Defensor* reversed the trend and reduced the Church to a division of state.[154]

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[149] Ibid., ii,17,17, pp. 265-66.

[150] Ibid., ii,17,18, p. 266.

[151] Ibid., ii,21,14, pp. 296-97.

[152] Ibid., ii,21,11-12, pp. 294-95 and ii,21,14, p. 297.

Sabine sees Marsilius as positing that the executive and judicial departments of government are elected by the citizens, but that the authority of the executive derives from the legislative act of the whole body of citizenry. The executive must be unified and supreme. A condition of two courts; one secular, the other ecclesiastical would be a contradiction. Marsilius would argue there is no room here for a dispersion of power, but it is the state that must emerge the victor. As victor, it is absolute, self-sufficient, and completely omnipotent.[155]

In his concept of a Church council Marsilius must have seen that such an organization would represent the wishes of secular government and very little else. With the Pope muzzled the Church has no voice. There would be nothing to prevent secular authority from taking over all ecclesiastical appointments, property, and the like, and almost completely abolishing the Church as an organization.[156] While Marsilius believes the evils of the hierarchy could be remedied by a representative general council, he fails to see its infallible claim would be no more valid than that of the Pope. In his conciliar scheme he, too, is requiring a delegate to be a member of two organizations: his respective state, and the universal Church. If Marsilius is to remain consistent with his principles, he must admit that this is a practical impossibility. The council he envisions relies on secular governments for cooperation, decision and coercion, and therein lay its defect. Since he has denied the Church any authority, his self-sufficient community, in effect, must act as an agent of a supernatural Church. The scheme never worked. National jealousies and particularism saw to that.[157]

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[153] McIlwain, *op. cit.*, p. 308.

[154] *Ibid.*, pp. 312-13.

[155] Sabine, *op. cit.*, pp. 297-98.

On the subject of sovereignty, as conceived in Marsilius' system, Professor Gewirth's criticism is both penetrating and thorough. Marsilius' doctrine differed from the normal medieval view of the state in that it shifted from seeking _final cause_ (or the norms of political virtue) to _efficient cause_ (by what agency and from what source is coercive authority derived?). His political teaching was the forerunner of modern sovereignty. Particularly, by denying the theologism of the papal view, Marsilius helped to develop the concept of modern sovereignty as expressed in the works of Machiavelli, Bodin, and Hobbes, regardless of whether or not they read his writings. The dualism of the traditional Church-state allocation yielded to the monism of authority characteristic of the new conception of state sovereignty. His influence extended to many others, such as, Luther, Locke, Rousseau, and even Marx.[158]

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[156] Allen, _op. cit._, pp. 189-90. Cf. also Harold J. Laski, _The Foundations of Sovereignty and Other Essays_ (New Haven: Yale University Press, 1921), p. 12.

[157] Gewirth, Vol. I, _op. cit._, pp. 309-10.

In Gewirth's opinion, Marsilius is substituting for papal plenitude an even fuller jurisdiction, one wielded by "the faithful human legislator", the "whole body of faithful citizens." Regarding his concept of summoning a Church council, Marsilius overlooks a problem: while each legislator may compel delegates to attend a council, there is no one to compel the legislators to elect or support a council. Yet, as Marsilius observes, matters requiring a council may carry serious implications regarding salvation.[159]

In positing law solely in the will of the people, he makes their will as sovereign as the traditional "higher law", or "natural law" concept which he rejects. Having ignored final cause, and searching only for efficient cause, he adequates the populace with the latter in that they alone are the legislators.[160] By freeing the legislator from divine and natural law, continues Gewirth, Marsilius effects a sovereignty without parallel in the medieval tradition. This sovereignty of the whole citizenry he attempts to predicate on "justice"; his intent is to unite legislative sovereignty and the moral concept of the ends of sovereignty in the *will* of the people.[161]

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[158] Gewirth, Vol. I, op. cit., pp. 309-10.

[159] Ibid., pp. 130-31.

In brief, Marsilius creates a popular sovereignty that is unlimited - even in theory. He will have it that all authority *should be*, *is*, and *must be* founded in the people. And so he must conclude, says Gewirth, for he regards politics as a theoretical science allied with biology, rather than a practical science allied with ethics. He has committed his system to following blindly the biological necessities of nature; he must follow where the argument leads. His belief that unity and authority, as applied to law within the state, are indivisible, approaches the concept of modern legislative government envisioned by Bodin and Hobbes. The keystone of political structure, as envisioned by these latter writers, is a rejection of the notion of mixed or divided sovereignty.[162]

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[160] *Ibid*., p. 173.

[161] *Ibid*., pp. 174-75. (Italics mine.)

[162] *Ibid*., p. 255-57. Cf. also Sabine, *op*. *cit*., pp. 298-304.

A parting observation is in order regarding Marsilius' denial of authority to the papacy. The clerical abuses he cites doubtlessly have some substance in fact, though they are probably exaggerated. As evils they rightly merit condemnation. For raising his voice in indignant protest, he is to be properly commended. But it would appear that his proposed remedy for an ailing Church is hardly calculated to insure its recovery. What assurance does he provide that the clerical tyranny he despises will not be replaced by an equally despicable secular tyranny? Is he asking us to believe that the secular realm will produce the saints the ecclesiastical failed to generate? If so, he strains our credulity. His concept of a "faithful human legislator" wielding absolute sovereignty in both domains, involves his fundamental argumentation in a blatant "begging of the question". Subsequent history was to show his legislator tended to become more "human" and less "faithful".

The intervention of the civil ruler in matters ecclesiastical, as advocated by Marsilius, presaged the vicious religious wars that racked Europe during the sixteenth and seventeenth century. It is not difficult to comprehend why Jefferson, and others of our founding fathers, appalled by such bloodshed, might come to believe that a separation between Church and state was a feasible conclusion.[163]

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[163] Anson P. Stokes and Leo Pfeffer, Church and State in the United States (rev. ed.; New York: Harper & Row, Publishers, 1950), pp. 100-103.

CONCLUSION

At the outset of this work it was observed that the medieval concept of sovereignty, as expressed in the representative writings of the four great political theorists treated, owed much to antiquity. While here and there erratic, the concept, for the most part, manifests a marked consistent and orderly historical development from the Grecian era to the end of the thirteenth century. During this latter period the first traces of the modern concept of sovereignty become discernible.

In Chapter One the debt to Aristotle was acknowledged. His concept of the state as a unified, self-sufficing, natural organization, aiming at man's highest good, profoundly impressed mature medieval thought. So also did his belief that true forms of governments: monarchy, aristocracy, and polity, were validated by the pursuit of the common good and justice. Ideally, he favored an aristocratic rule by the best men; practically, he realized that a polity was the best form of government for most men in their present human condition. Notwithstanding the latter view, he posited a view of natural inequality among men: some were natural rulers, others were natural slaves.

With Cicero in the first century A.D., came the stress on the natural equality of man, a clear expression of the natural law concept, and the belief that the ruler is constrained by law. In Seneca, too, is found equal emphasis on the natural equality of men and, additionally, the notion that man's fall from original blessedness occasioned the need for coercive government.

Among the Roman lawyers of the second and third century A.D., notably Ulpian, there is developed the idea that slavery stemmed from the *jus gentium* and was not a natural law dictate. He further postulated the belief that political authority is rooted basically in the populace.

Pertinent to an understanding of medieval sovereignty was the view of Peter and Paul that Christians were to be subservient to all civil authority. This attitude was seen as a means of checking a growing anarchism in the early Christian community and of stressing the dignity of the ruler's office. It was not to be construed as demanding unswerving obedience to tyranny.

In Augustine's works there is a decided emphasis on spiritual authority being superior to the temporal and an expansion of the Stoic belief that coercive civil government arose solely as a result of man's fall.

Vital to the bitterly-contested Church-state struggle over sovereignty in the late medieval period was the two-sword concept of Pope Gelasius I in the fifth century. Each realm was to be recognized as distinct. There was to be no encroachment by either faction, yet since, in some instances, no complete division could be made, an optimum of cooperation by both was deemed necessary.

From the sixth through the ninth centuries there arose the distinct medieval notion that law arose from custom and the significant corollary that a law was found, not made. This theory culminated in the mature medieval view aptly postulated by Bracton, the thirteenth century English jurist: the king does not make the law; rather, law makes the king, and he is certainly bound by its restrictions.

By this latter century it is possible to discern a common medieval tradition that all state authority must be directed to the common good and justice, and that law is the rational means of insuring these ends. The ruler must establish such laws with the consent of the community. Failing in this, the monarch becomes a tyrant; as such, he forfeits the obedience of his subjects to his unjust decrees. Admittedly, medieval monarchs often did not, in practice, conform to these ideals, but the ideals themselves could scarcely have been nobler. The entire political system of the period suffered from a lack of proper machinery for overhauling a tyrant.

In Chapter Two a brief historical account of Church-state dissention precedes the presentation of John of Salisbury's view of sovereignty in these two realms.

At its inception Christianity clashed violently with the divinity cults of the Roman emperors. Even when these emperors officially adopted Christianity, they inclined towards letting their temporal suzerainty spill over into the ecclesiastical domain. Constantine in the fourth century and Charlemagne in the ninth, were examples. Feudalism encouraged this practice since rulers were eager to utilize the services of the better educated clergy as administrators. The two realms became hopelessly enmeshed. The problem openly erupted in the lay investiture controversy of the eleventh century between Pope Gregory VII and Emperor Henry IV. The temporal realm compromised with certain concessions, but the problem continued to smoulder.

It was still a sensitive issue when John of Salisbury, the first of the political theorists treated in this work, began writing in the twelfth century. For him all sovereignty is limited. Unstinting in his praise of the dignity and awesome responsibility of the monarch, he will have it that the latter's sovereignty is definitely restricted by the demands of justice expressed through virtuous laws. Tyranny is damned as the most heinous of crimes. While the Church as a spiritual organization is regarded as superior to the secular realm, John is no less critical of clerical abuses and imposes limitation upon ecclesiastical power. He sees the Church as exercising a moral supremacy over the state, not a legal jurisdiction.

John is best known as a frank advocate of tyrannicide when all other means of restraining a tyrant have been exhausted. In this radical step he seems to permit a citizen to act on the basis of a divine or natural law precept, rather than from a public mandate.

Chapter Three treats the moderate view of Church and state sovereignty as expressed in the works of St. Thomas Aquinas, the second representative writer discussed in this paper. In his century, the thirteenth, two powerful Popes, Innocent III and Innocent IV, advanced the claims of papal sovereignty to unprecedented heights. The former contended he possessed the right to judge the qualifications of emperors, _occasionally_ to exercise temporal authority, to choose a candidate when imperial electors were deadlocked, and to intervene in matters of state where "sin" was involved. Innocent IV, speaking as a canonist, contended that the Pope was the "ordinary judge" of every man.

St. Thomas is seen as far more moderate. He follows Aristotle in contending that government flows as a natural necessity from man's political nature; the state is self-sufficient and exists to enable man to live well.

For Aquinas the best form of government combines the essential qualities of monarchy, aristocracy and democracy. While he favors monarchy, the type he espouses is the "mixed" or constitutional variety, not "pure" monarchy.

Only a heavenly reward is adequate for the monarch who dignifies his lofty office with a righteous reign. Tyranny eventually seals the despot's doom in this and the after life. No usurper need be obeyed. While Aquinas seems to have approved of tyrannicide in an earlier work, his mature view calls for a legal, public overthrow of the tyrant. Governments should be so arranged that the possibility of tyranny is all but negated.

Aquinas' formulation of a hierarchial arrangement of divine, natural, and human positive law is his major achievement in the restraining of unbridled sovereignty. The ruler is subject to law. Unjust laws need not be obeyed, and when they are opposed to divine laws *must not* be obeyed. For the ruler, justice is an absolute requirement, since only in pursuit of this virtue can he insure the common good.

The Church's role is to guide men to their ultimate goal of eternal happiness. Its authority permits it to intervene only in those temporal matters subject to spiritual authority. The legitimate government, even of an infidel monarch, is binding upon Christians, for such authority is grounded in natural law and is not superseded by the divine. In the final analysis, the Church possesses an *indirect*, not a *direct* power, in matters temporal.

Chapter Four deals with the extreme claims for ecclesiastical sovereignty as propounded by Egidius Colonna, a thirteenth and fourteenth century political philosopher. He is the third of the major writers selected for this treatise.

In an early work concerned with the structure of secular government Egidius had emphasized the Aristotelian notion of the natural end of the state. While favoring hereditary monarchy, he presents a penetrating analysis and condemnation of tyranny. All law he ultimately reduces to natural and positive law. In an unique departure from the traditional medieval view, he affirms that the monarch is bound by natural law dictates but is freed of allegiance to positive law since he is its author. The absolute monarchy claims of the sixteenth and seventeenth century may have had their origin here.

His radical claim for papal sovereignty in both the spiritual and material realms is methodically developed with considerable ingenuity. On the basis of a natural subordination of a lower realm to a higher, he concludes that the admittedly lower temporal realm is subservient to the higher spiritual domain. The Church, and ultimately the Pope, is this supreme authority. Christ's presentation of the two swords to his apostles and the whole concept of Petrine supremacy further confirm the Pope's sovereignty in both fields. Additionally, he contends that the temporal power of all dominion or ownership of material wealth by anyone ultimately stems from the Church. Here is his explanation: it is through Baptism and the other sacraments which the Church administers that man is justified and elevated from the slavery of sin, is first made capable of exercising any legitimate power of ownership. The Pope, as director of this absolutely sovereign body, thus enjoys absolute dominion over every conceivable person and possession. He may even act beyond positive human moral law since he is its author. No one may bridle him, though he ought to bridle himself. Such far-reaching sovereignty threatened the state with almost complete absorbtion by the Church.

Incorporating some of Egidius' tenets, though not as radical in form, was the famous bull, Unam sanctam of Pope Boniface VIII in 1302. As a solemn declaration, it is construed as implying the absolute subjection of secular power to the papacy. This dream of a united Christian world under papal leadership faded with the tragic death of Boniface at Anagni in 1303.

Chapter Five is concerned with the reactionary opinions of Marsilius of Padua, the fourth and last of the leading figures selected for this treatise. In his writings he collaborated with a Frenchman, John of Jandun.

Following the Aristotelian tradition, Marsilius sees the state as a natural organization but contends that the principal role of the ruler is to establish harmony among the quarreling factions within the state.

Law and the legislator form the core of his treatment of sovereignty. Law is conceived of as an ordinance of political prudence concerned with justice but, contrary to tradition, coerciveness, instead of reason, is made its essential property. In his system the people, or the "whole body of the citizens", or their "weightier part" is the legislator. He does not espouse majoritarian rule, but again departs from tradition in insisting that supreme legislative authority resides only in the will of the populace. For him human positive law cannot be posited on divine or natural law, as was traditionally maintained, because the dictates of the latter two are obscure. The desire of the people to preserve government is reduced to an automatic, biological impulse, not a rational, natural law dictate. In effect, Marsilius seems to ignore moral right and wrongness in law and uniquely makes the essence of law consist in approval by the whole community and the coercive product of their wills.

The ruler in establishing offices and effecting harmony within the state, is elected, controlled - and may be deposed - by the sovereign legislator, i.e., the people. They are the primary efficient cause of the state; he is the secondary or instrumental cause. In brief, he emerges as their instrument or servant. Marsilius, thus develops a legal concept of the state, a departure from the traditional medieval view of the state as a naturally integrated whole.

In the Church-state controversy, one of Marsilius' primary concerns, he envisions the rival authority of the Church as a direct threat to the unity and order the human legislator must preserve within the secular commonwealth. He marshalls an array of scriptural, historical, and politically expedient arguments to prove three theses. They are: (1) the Church possesses no coercive power; (2) the Pope and clergy are subject to secular rulers, and thus cannot govern the Church; and (3) the Church has no title to property.

On the first issue he contends that all coercive force belongs only to the human legislator. The role of the clergy is merely to teach and administer the sacraments; the only divine law infraction punishable in this life must be simultaneously a human law violation, and, as such, is reserved for the human legislator. To have two coercive powers within the state would create a chaotic multiplicity of sovereigns.

In proving his second contention, Marsilius argues that the earliest tradition supports the view that the clergy were always subject to the faithful human legislator. Such developments as the papacy, the hierarchy, diocesean assignments, etc., were corrupt human contrivances.

All religious concerns, from the summoning of councils to the simplest ritual direction, are to be decided solely by the community of the faithful under the direction of the "faithful human legislator." To allow the papacy such jurisdiction would be an unwarranted and disruptive interference in the state's domain.

Similarly, he argues on the third issue, that the earliest Christian beliefs stressed evangelic poverty. If the Church could amass wealth - and the power that inevitably flows from such an acquisition - the sovereign power of secular rulers would be jeopardized. Consequently, the latter, and they alone, must be the eventual rightful possessors of the Church's property.

Marsilius reduces the Church to a department of state in direct opposition to Egidius Colonna's concept of the state as a department of the Church. Neither could have strayed further from the Gelasian mean. Marsilius, desirous of exchanging secular sovereignty for ecclesiastical, requires civil governments to be the agents of a supernatural Church.

Since his concept of the state ignores the final cause of virtue and seeks only the efficient cause of coercive power and its origin, his doctrines adumbrates the modern concept of sovereignty propounded by Machiavelli, Bodin, and Hobbes. Freeing the legislator from divine and natural law restrictions, he forges a claim for an absolutely unlimited - and unparalleled - popular sovereignty. His conclusions follow consistently from his view of politics as a theoretical science linked with biology; contrariwise, traditional medieval opinion regarded politics as a practical science linked with ethics. In the final analysis, Marsilius effects little more than exchanging a civil despot for an alleged ecclesiastical tyrant.

It has been noted that the normal medieval view of sovereignty conceived of the ruler as a virtuous monarch directing the state toward justice and the common good. These goals were to be secured by just human laws, grounded in divine and natural law, and binding on king and populace alike. Such laws were established by the ruler with the consent of the community. Any breach of faith through unjust legislation on the part of a tyrannical monarch forfeited his subjects' obedience to such precepts. This was the theory; in practice, unfortunately, kings were not deterred from their ambitions and often reigned capriciously.[1] Yet, the common medieval theory of sovereignty, expressed in the main by John of Salisbury and Aquinas, represented an ideal or norm to which a ruler was expected to conform and in the light of which his regime could be evaluated. And, logically, ideas should precede action.

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[1] R.M. MacIver, The Web of Government (New York: MacMillan Co., 1947), pp. 66-67.

It is by contrasting this medieval notion with the principles of modern sovereignty that the insidious development of modern state absolutism is rendered intelligible. Representative views of this latter school should make this evident.

Niccolò Machiavelli (1469-1527) believed that a virtuous prince may fail among so many who are evil. Hence, to insure his survival, as well as that of the state, he must learn the practice of certain vices. It is well for him to appear virtuous, but he must be disposed to act otherwise when necessity dictates such a course.[2] For Machiavelli, the state is a mere human contrivance. It has no end involving the moral development of its citizens or their preservation from evil. Rather, the organization and preservation of power as an end in itself is the state's chief purpose.[3]

The medieval notion of sovereignty suffered additional distortion at the hands of Jean Bodin (1530-1596), the French proponent of regal absolutism. Sovereign power must be perpetual and irrevocably absolute.[4] Bodin initially concedes that the sovereign is subject to divine and natural law, and certain requirements of the *jus gentium*.[5] However, he then asserts, as Egidius Colonna had contended earlier, that the prince is beyond the jurisdiction of positive human law since no one can bind himself, even if he wishes, in a matter proceeding from the free exercise of his own will.[6] The chief mark of sovereignty, in Bodin's opinion, is the right to impose laws on all subjects without their consent.[7] Additionally, in opposition to the civic unity of the medieval tradition, he enshrines the monarch, not merely *above* the citizens, but *separate* and *apart* from them.[8] On this pinnacle, the monarch can no more share his ruling power than God could create another equally sovereign deity.[9]

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[2] Niccolò Machiavelli, The Prince, trans. Luigi Ricci and rev. E. R. P. Vincent (Chicago: The Great Books Foundation, 1955), xv, pp. 51-52; xviii, p. 59 and xix, p. 65.

[3] Robert N. Beck, Perspectives in Social Philosophy (New York: Holt, Rinehart and Winston, Inc., 1967), p. 94.

It is from Thomas Hobbes (1588-1679), the celebrated English political philosopher, that modern sovereignty received its greatest impetus. Severing positive law from its natural law nexus, he conceives of law as merely the word of one who by right has command over others.[10] In his social contract scheme, society's origin is viewed as an artificial expedient designed by predatory men to prevent their destroying one another. Law is _not_ a matter of _reason_, but of _will_. In the social contract, all reduce their wills to the _one_ will of the absolute, unbridled monarch.[11] Also, within the embrace of this absolute will is the sovereign's exclusive right to dominate religion and be the final interpreter of divine law within his realm. A heretic now becomes one who disputes the sovereign's interpretation of a religious issue.[12]

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[4] Jean Bodin, *Six Books of the Commonwealth*, abridg. and trans. M. J. Tooley (Oxford: B. Blackwell & Mott, Ltd., 1955), i,8, pp. 25-26.

[5] *Ibid*., p. 28.

[6] *Ibid*., pp. 28-29.

[7] *Ibid*., p. 32.

[8] *Ibid*. (Italics mine.)

[9] *Ibid*., i,10, p. 42.

The theories of John Austin (1790-1859), the renowned English jurist, also contributed to the growth of modern sovereignty. For him the essence of law is the "command" theory, whereby a superior authority enforces its _will_ on an inferior by having the power to inflict pain or evil on the latter.[13] That determinate human superior which receives obedience from the bulk of a given society, but which itself is _not obedient_ to a similar superior, is considered, the sovereign power within a state.[14] Here again legislative absolutism and the notion of law as "will" are emphasized.

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[10] Thomas Hobbes, _Leviathan_, ed. Nellie Fuller ("Great Books of the Western World", Vol. XXIII; Chicago: Encyclopaedia Britannica, Inc., 1952), i,15, p. 96.

[11] _Ibid_., ii,17, p. 100; cf. also ii,20,p. 109. (Italics mine.)

[12] _Ibid_., iii,42, p. 238.

[13] John Austin, _The Providence of Jurisprudence Determined_, ed. H. L. Hart (New York: The Noonday Press, 1954), pp. 14-15 and p. 24. (Italics mine.)

It comes as no surprise to find a contemporary spokesman for the modern school expressing similar sentiments. Lansing argues that sovereignty resides basically in the possession of a physical force capable of exacting obedience from others. The exercise of such sovereignty does _not_ involve _reasonableness_, _justice_, or _morality_ but simply the application or threat of brute _force_.[15] Sovereignty, so construed, precedes a constitution or any other form of legality.[16]

But there is also evidence that current thought on sovereignty is shifting from absolutism and tending once more toward the medieval concept. Benn and Peters clearly distinguish between legal (or _de jure_) and political (or _de facto_) sovereignty. Legal sovereignty should be the primary concern of political philosophy; it is grounded in a nation's constitution. These authors contend Hobbes,

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[14] _Ibid_., p. 194. (Italics mine.)

[15] Robert Lansing, _Notes on Sovereignty_ (Washington: Carnegie Endowment for International Peace, 1921), p. 7 and pp. 81-82. (Italics mine.)

[16] _Ibid_., pp. 42 and 93.

Austin, and others of their school err in stressing the necessity of a determinate body wielding absolute coercive power, the essential element of political sovereignty. Submission to authority is never absolute, and coercive power is not the only kind of power. Men submit to authority on the basis of some concept of legitimacy or right and acknowledge that law precedes sovereignty. Moreover, political power always involves an interplay of numerous pressures, hence, sovereignty is always divided, never absolute.[17] The state, in practice, defers in its power to many associations whose good will it must have. In fact, the moral role of the state in pursuing the common good may be said to lie in *impartially* arbitrating the conflicting interests of these many associations.[18]

Barker, writing in a similar vein, expands these concepts. For him all sovereignty within the state is essentially legal and is definitely limited.[19] Sovereignty may be viewed on three levels each limited by a higher stage. First, within the state, it resides ultimately in the constitution and under the constitution immediately in the legislative body. Second, and still within the state, sovereignty is grounded in a common conviction of justice. Third, outside of the state, justice in social thought becomes the extra-legal and supra-legal sovereign of sovereigns, rising above the constitution and legislative bodies it has helped to create.[20]

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[17] S. I. Benn & R. S. Peters, *Social Principles and the Democratic State* (London: George Allen & Unwin, Ltd., 1959), pp. 87-89 and 302-308; cf. also Harold J. Laski, *A Grammar of Politics* (New Haven: Yale University Press, 1925), pp. 50-51 and p. 55.

[18] *Ibid*., pp. 313-25. (Italics mine.)

[19] Ernest Barker, *Principles of Social & Political Theory* (Oxford: Clarendon Press, 1951), pp. 65 and 69.

Barker observes that the sovereignty of the idea of justice and the sovereignty of social thought are inseparable and, to that extent, the votaries of natural law championed a true belief. Additionally, he observes, the temptation to reduce the three sovereignties above to one sovereign will is extremely hazardous. For, when will is made final, then force becomes final; a will which prevails without regard to the object it wills, is nothing less than force.[21]

Modern sovereignty developed as an attempted solution to the social, political and religious problems attendant to the Renaissance, the Reformation, the decay of feudalism, the decline of papalism, and the emergence of nationalism.[22] Its answers seemed proper to the age. However, the modern totalitarian state was to seize upon and enlarge these principles of absolute legislative sovereignty and coercive power, devoid of moral limitations, and carry them to their logical conclusions. Faced with the practical reality of this awesome specter, modern political theorists may feel constrained to turn back to the principle of medieval sovereignty once scorned as too idealistic.

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[20] Ibid., pp. 212-213.

[21] Ibid., pp. 214-216.

[22] Johannes Messner, Social Ethics, trans. J. J. Doherty (rev. ed.; St. Louis: B. Herder Book Co., 1965), p. 574.

The problem of Church-state sovereignty bears additional comment. Historically, even before Marsilius wrote, Philip the Fair, the French monarch, had induced Pope Clement V, a fellow countryman, to abandon Rome for Avignon in 1309. This unwarranted interference by the secular head of an emerging national state led to the papacy's seventy-year exile from Rome, contributed to the Great Schism, and precipitated the disgraceful situation of three candidates laying claim to the papal office. The Church, exhausted in this struggle, was unable to withstand the onslaught of the Reformation which shattered the spiritual unity of Christendom. In this disruption, Catholic and Protestant kings alike, emerged victors; absolute monarchy progressed.[23] Eventually, civil rulers, especially in Germany and England, assumed the task of determining the validity of Church doctrine. Marsilius was vindicated. The Peace of Augusburg in 1555 could now consistently formulate its famous principle: "*cujus regio ejus religio*."[24] But it was a principle obviously at variance with the Gelasian concept.

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[23] McCoy, *The Structure of Political Thought*, *op. cit.*, p. 131.

[24] *Ibid.*, pp. 181-82.

The Church finally effected a working compromise with the sovereign national states by means of the concordats of the fifteenth and later centuries. These permitted her, as a spiritual authority, an "indirect power" in temporal matters.[25] And this, as has been indicated earlier, was the mature view favored by Aquinas.

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[25] McIlwain, op. cit., pp. 352-53. For an excellent, up-dated statement of Church and state roles regarding religious liberty, cf. The Documents of Vatican II, ed. Walter M. Abbot & trans. Joseph Gallagher (New York: The America Press, 1966), under document "Church Today," Part II, Ch. IV, Section 76, pp. 287-89. Also under document "Religious Freedom," Chs. I-II, Sections 1-15, pp. 681-96.

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